

June 29 Gilbert 3/-

Jas A Newport

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TREATISE

OF

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**Distresses, Replevins, and
Abowries,**

In the COURTS at

Westminster, County Courts, Hundred Courts, &c.

S H E W I N G

How the Law is alter'd by the late Statutes for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants; with plain and easy Directions how to distrain for Rent, Form of the Notice to the Tenant, Inventory, Appraiser's Oath, &c.

A L S O

Divers Statutes touching the Office of Sheriffs, and Passing their Patents and Accounts; and the LAW concerning Elections and Returns of Members of Parliament, &c.

The Third Edition, to which is now added, *The Office and Duty of a Coroner, with proper Precedents, and other Additions.*

Useful to all Sheriffs, Landlords, Tenants, Farmers, Stewards, &c.

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In the SAVOY:

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T H E

THE

INTRODUCTION.

HAVING designed in the following Method of
this Treatise.
 Sheets to treat of *Distresses*, and
 shew who may distrain, for what Cause,
 at what Time and in what Place, what
 may be distrained, and how to be used.
 In the next Place I shall treat of *Reple-*
vins in a more particular Manner than
 hitherto has been done, and shall therein
 first shew, the Nature, Kinds, Incidents
 and Effects of Replevins *by Writ* in ge-
 neral, and afterwards the Method of pro-
 secuting Replevins *by Complaint*, in the
 County-Courts, &c. and incidently shew
 the Nature and Use of Pledges *de prose-*
quendo & *retornando*, and of gaging De-
 liverance, Claims of Property, with the
 Writs *de proprietate probanda*, *Retorna*
Habendo, Second Deliverance, *Recordare*,
Withernam, &c. and then more parti-
 cularly consider who may have Reple-
 vins, against whom, of what Things,
 and in what Courts; and of the Count,
 Pleas of several Kinds, Process and Judg-
 B ment

The Introduction.

ment therein, together with Damages and Costs awarded thereupon; as also of *Avowries*, &c. Likewise I shall give the Reader some Observations on the Statutes touching the Office of Sheriffs, and passing their Patents and Accounts; and also the Law concerning Elections and Returns of Members of Parliament; and lastly will be added, a Guide to Coroners in their Office and Duty, with proper Precedents.

A T R E A

A
T R E A T I S E
O F
Distresses, Replevins,
Avowries, &c.

C H A P. I.

S E C T. I. *Distresses of different
Kinds.*

A Distress is said to be of two Kinds, viz. *First*, Kinds of Distress. *a Distress Real*, and that is, where Land is distrain'd upon a *Grand Cape*, or *Petit Cape*, which are now almost disused; nor do they any way concern the Matter we are treating of, and therefore I shall not now intermeddle therewith. 1. Real.

The second is a Distress Personal, which is that we are to speak unto, and which is always made of some moveable Things, either living or dead, and is thus defin'd; viz. *A Distress is where one doth take and detain the Beasts, Cattle, or other moveable Things of another Man, in some Ground or Place, for Debt, Rent, or other Duty accrued, or for some Wrong or Damage done, altho' the Property belong to a Stranger; but see below in this Chapter.* 2. Personal. Definition.

Of Distresses. Ch. I. §. I.

But where they are a Stranger's Cattle, they ought to be *Levant* and *Couchant* upon the Land, or else are not distrainable for Rent or Services.

And seeing the Sheriff on Replevins before him in the County-Court, and all other publick Officers, ought to be guided in their Proceedings by the Laws of the Realm, I think it necessary to shew,

Method.

1. Who may distrain.
2. For what Cause.
3. At what Time.
4. In what Place.
5. What Things may be distrain'd.
6. Of covenable and excessive Distresses.
7. How Distresses are to be used, &c.

I. Who may distrain.

Lord.

The Lord of a Manor may distrain Cattle, &c. as Damage-feasant, where the Tenant puts in more Cattle in the Common than he ought to do. 43 E. 3. 32.

So for Rent-service, &c. Co. Lit. 142.

The Lord may distrain for an Amerciament in his Leet. Vide 6 Co. 25. a. 20 H. 7. 66.

So for a Relief, &c. and has no other Remedy; but his Executors shall have Debt, and cannot distrain. 4 Co. 49.

Also the Lord may distrain for Forfeitures of Inmates, or for Erecting of Cottages, per 31 El. cap. 7.

Commoner

A Commoner may distrain the Cattle of a Stranger, Damage-feasant, and he is not oblig'd to shew that thereby he lost his Common. Vide 9 Co. 112. 15 H. 7. 2. 33 H. 8. 15. 3 Lev. 104.

Tenant, &c.

Tenant at Sufferance may distrain Damage-feasant. 4 H. 7. 3.

So may any Person claiming a Rent, &c. by Prescription, or by Grant.

Cestuy

Ch. I. §. I. Of Distresses.

Cestuy que Use before the Stat. 27 H. 8. of *Cestuy que Use*. Uses, could not distrain, because he had nothing in the Land, 15 H. 7. 2. but since that Statute he may.

And Executors of Tenants for Life may for Executors. Rent Arrear, by Stat. 32 H. 8. c. 37. *Vide Lutw.* 1230.

Sheep were delivered to a Feme Sole to dung Baron and her Land; she marries, and the Husband commands the Owner to take the Sheep off the Lands, who refuses, the Husband may distrain them Damage-feasant. 43 E. 3. 32. Feme.

A. seised of 200 Acres of open Moor, sold 50 Acres thereof to B. each Party ought to inclose Common. against the other; and if the Cattle of one go into the Land of the other, they may be distrain'd, Damage-feasant. *Dyer* 372.

It is said an Innholder cannot distrain for Inn-keeper. Victuals eaten by his Guests. *Fitz. Distress* 19.

Yet he that takes Cattle as Estrays, may distrain them, till paid for their Meat. 44 E. 3. 13. Seizon.

So it seems a Taylor may a Garment, till Taylor. paid for the Making.

A. indebted to B. for Tabling, delivers Goods Bailee. to him until he be satisfied; B. may distrain them until he be paid. 46 E. 3. 30.

Tenant in Dower cannot distrain for Arrear. Dower. ages due before the Recovery. 40 E. 5. 22.

One claiming a Rent by Prescription, may distrain for it. *Libr. Intr.* 557. *Fitz. Charge* 1. Grantee.

Surveyors of Highways may distrain for not Officers. Working, &c. by 18 El. c. 10.

Officers may distrain for Forfeitures of Inn-keepers, &c. by 1 Jac. 1. c. 9. 43 El. c. 2.

And the like Power is given by divers other Statutes.

And where the Law gives a Distress for any publick Benefit, the Officer that distrains may also sell, &c. *Salk.* 379.

SECT. II. *For what Cause.*

For Fines and
Amercia-
ments in
Courts-Leet.

IT may be for a Fine in a Court-Leet. 11 Co. 45. a. 8 Co. 41. 1 Roll. Abr. 665. F. 1 Roll. Rep. 201.

The like for an Amerciament there. *Ibid.* & 5 E. 3. 139. 13 E. 3. 303. Cro. Jac. 382.

As for an Amerciament for Breach of a By-Law, &c. there. 6 Co. 25. 8 Co. 21. 11 Co. 55.

For a Distress is incident to Fines or Amerciaments in Leets. 5 E. 3. 139. 10 E. 3. 303. 9 H. 7. 2. 12 H. 7. 35. 8 H. 4. 15. 4 E. 3. 95. 5 E. 3. 159. 29 E. 7. 3. 28. 20 H. 7. 66. 1 Roll. Abr. 666.

For Amercia-
ments in
Court-Baron,

So for an Amerciament in a Court Baron, by special Prescription. 16 H. 7. 14. 9 H. 7. 22.

As one distrain'd for an Amerciament, for not doing Suit there. *Vide* 4 Co. 95. a. 1 Vent. 105.

And the Lord may prescribe to distrain for Amerciaments there. 11 Co. 45. a. *sed vide Dr. & Stud.* 74. and 29 H. 7. 66. *contr. vide* 1 Brownl. 36. Mo. 185. Noy 2.

Or Sheriff's
Torn.

So it may be for an Amerciament at a Sheriff's Torn, &c. if there be a special Prescription to amerce and distrain. *Vide* 33 H. 8. 30. 1 Vent. 105. 2 Keb. 701, 739, 745.

And for an Amerciament in a Sheriff's Torn, he may distrain throughout the County. 12 H. 4. 24. 13 H. 4. 9. F. Avowry 194.

Pro certo
Leta.

One cannot distrain *pro certo Leta* without Prescription, because it is against Common Right. 11 Co. 44. *vide* 6 E. 3. 6 Co. 77. b.

And the Tithingman that collects it of the Resiants, ought to prescribe to distrain for it. *Ibid.* and 6 E. 3. 189.

Hundred Suit.

For Suit to a Hundred by Reason of Tenure, a Distress is due of Common Right. 5 E. 3. 152. 9 E. 3. 356.

Ch. I. §. 2. Of Distresses.

7

It may be for a Tax set by the Inhabitants of a Parish, Justices of Peace, &c. *Dr. & Stud.*

74. b. 22 E. 3. 10.

As for a Poor's Tax. 2 *Lutw.* 1179. *Salk.* 206.

So if set by the Justices of Peace, if equally laid. *Cro. Car.*

It may be for Suit at a Mill. 22 H. 6. 14. Suit, &c. *F. N. B.* 122. *M.*

So for Rent-services, and all Manner of Services certain. *Dr. & Stud.* 74. *Co. Lit.* 96.

As A. gives Lands to B. to serve him, &c. when he shall be required, for such Service on Request and Refusal, A. may distrain. 22 H. 6. 33.

So for Heriot-service. *Dr. & Stud.* 75. *Plowd.* Heriots. 96. 1 *Roll. Abr.* 665. E. 5 *Co. Lit.* 83. 161. b.

Or he may seise at his Election. 18 E. 3. 22. 6 E. 3. 277. *Fitz. Heriot.* 2 *Cro. El.* 32, 590.

But for Heriot-custom he can only seise. *Fitz. Heriot* 7. And Note, A Seisure must be only of the proper Beasts of the Tenant, but a Distress may be of any Man's Beasts which are upon the Land. 1 *Jones* 303. *Cro. Car.* 260. *Cro. El.* 32, 590. except there be a Custom also to distrain.

For Toll one may distrain. 11 H. 6. 39. Toll. 20 H. 7. 1.

But *vide Trin.* 28 *El. Br. Rot.* 963. the Vill of N. did distrain for Toll, and because they alledged not a special Title or Prescription to have it, adjudged against them. *Vide* 11 *Co.* 44. 1 *Roll. Rep.* 33, 35, 75, 76. 1 *Jo.* 132. *Lat.* 37, 95, 130.

By Custom a Distress may be taken for Repair of Bridges, Churches, &c. *Vide* 1 *And.* 71. 1 *Roll. Abr.* 666. b.

A Distress is incident to a Rent-service of Rents. Common Right. *Co. Lit.* 142. 1 *Roll. Abr.* 665. E.

And any Rent by Prescription may be distrain'd for. *Fitz. Charge* 1.

So may any Rent by Grant, but not for Rent-service made Seck by Grant. *Co. Lit.* 150, 151.

If one holds of another by Fealty and Rent, who takes a Wife and dies, she shall have a third Part of the Rent as Rent-seck, and yet *in Favorem Doris* she may distrain for it. *Keilw.* 104, 126. *Vide Co. Lit.* 169. b.

A. grants a Rent-charge to B. in Tail, and that if the King's Bailiff distrain'd, that the Grantee might distrain, &c. 46 E. 3. 18. *Vide* 38 E. 3. 33.

But on a Lease of Tithes, rendring Rent, held no Distress should be (of the Tithes) because the Tithes are the Thing leased. 11 H. 4. 40.

Arrearages. Tenant in Dower cannot distrain for Arrearages of Rent before the Recovery. 40 E. 3. 22.

Reliefs, &c. Distresses may be for Reliefs, Estrays, Pledges, &c. *Vide ante.*

Copyhold Fines. But not for a Fine on Alienation of a Copyholder, due by Custom, unless there be a Custom also to distrain for it. *Contra* if due by Tenure. 1 Jo. 132. 3 Bulst. 323. Lat. 37, 95, 130.

By Custom. For when a Duty is raised by Custom, a Distress for it must be also by Custom. *Vide Raym.* 204. 1 Vent. 105. 2 Keb. 701, 739, 745.

Nomine pæne. If a Rent-charge is granted with a *Nomine pæne*, and Clause of Distress, and the Year incurs, he cannot distrain for the *Nomine pæne*, for it depends on the Rent. *Winch* 7.

Where a Distress is taken without Cause, the Owner may rescue it before impounding, but not after. *Salk.* 247.

Stat. 8 Anne. And Note; by the Stat. 8 Anne, cap. 17. Whereas Tenants *pur auter vie*, and Lessees for Years, or at Will, frequently hold over after their Leases or Terms expired, when no Distress could by Law be taken, the Landlord is thereby empowered to distrain after the Expiration of such Term or Lease; provided it be within six Kalendar Months after, and during such

such Landlord's Interest, and the Tenant's Possession.

And by Stat. 11 Geo. 2. cap. 2. Where a Tenant who hath Power to determine his Lease, gives Notice of his Intention to quit the Premises, and yet refuses to deliver up the Possession, at the Time contained in the Notice; he, his Executors or Administrators, shall thenceforward pay to the Landlord or Lessor double the Rent which they should otherwise have paid, to be levied, &c. in the same Manner as the single Rent or Sum, before the giving such Notice, could be levied, &c. and this double Rent, &c. is to continue to be paid during all the Time the Tenant shall continue in Possession.

SECT. III. *At what Time.*

FOR Rent-services one shall not distrain in the Night. 9 Co. 66. Co. Lit. 142. Not in the Night.

Nor for Rent-charge or Seck, or other Duty, except *Damage-feasant*. Ibid.

No Distress ought to be on a *Sunday*, except for *Damage-feasant*. *Quere*. Nor Lord's Day.

After the Term ended, no Distress can be. 14 H. 4. 31. Nor after the Term.

Except the Landlord's Title and the Tenant's Possession continue, by Stat. 8 Anne, cap. 17.

For if a Lease for Years be ended, and the Lessee keeps Possession, he may be distrained. 22 H. 6. 96.

Nor can it be during the Term, except made payable before the Term ended. Nor during the Term.

For if a Lease be till *Michaelmas* for one Year rendring Rent at *Michaelmas*, he cannot distrain before *Michaelmas*, at which Instant the Term is ended. Dr. & Stud. 74.

A. leases for Years, and grants the Reversion to B. yet if the Cattle of B. come upon the Land, A. may distrain during the Term. 10 E. 4. 4. *sed Quere*.

The

The Husband leases his Wife's Lands, the Wife dies without Issue, the Husband cannot distrain, because the Reversion goes to her Heir. *Dyer* 28. 9 *H.* 6. 45.

There can be no Distress for Rent where there is no Reversion; as where a Termor grants away all his Term to another rendring Rent, he can't distrain for it. 2 *Lev.* 80. *Lat.* 211.

So if one be seised or possessed for Life of a Rent-charge or Service, and Arrearage incur, and then he grants over the Rent, he can't distrain for the Arrears, because they are sever'd from the Freehold. 4 *Co.* 50. *b.* *Vaugh.* 40.

Damage-feasant.

Distress for *Damage-feasant* may be in the Night. 9 *Co.* 66. 11 *H.* 7. 8. 7 *Co.* 7.

And one may distrain in *Damage-feasant*, tho' the Owner make fresh Pursuit. 7 *H.* 7. 1. 11 *H.* 7. 4. 10 *H.* 7. 22.

Sed vide Lutw.
1577. &c.

And it seems Cattle tho' escaped may be distrain'd for *Damage-feasant*. *Fitz.* Tit. *Avowry* 219. *Plow.* 38.

A. enters for a Condition broken, *Quere* if he may take the Lessee's Cattle *Damage-feasant*. *Dyer* 322.

Formerly one could not distrain twice for the same Cause, if sufficient could be taken at first, *Mo.* 7. *Cro. El.* 13. and so is *Lutw.* 1536. said to be adjudged; *sed Quere* the Stat. 17 *Car.* 2. cap. 7. *vide* 1 *Roll. Abr.* 672.

Levant and Couchant.

Where one may distrain for Rent-service by ancient Tenure, or for Rent reserv'd on a Lease for Years, or for a Rent-charge, &c. before the Cattle are *Levant* and *Couchant*, *vide Lutw.* 1577 to 1582.

Notice.

And where Notice to the Owner of the Cattle that they are on the Land, is requisite before the Distress made. *Ibid.* 1579, 1580.

S E C T. IV. *In what Place.*

A Distress cannot be taken on the King's Lands. Lands, *i. e.* while in his Possession. *Vide Savil 125. 5 Co. 92. 1 Roll. Abr. 670. K. L. 671. K.*

But the King may distrain in all the Lands of His Tenants. his Tenants, tho' held by others, for Rents, Avowries, Fee-Farms, &c. *1 Roll. Abr.*

For an Amerciament in the Torn, the Sheriff County. may distrain throughout the County.

So one fined at the Leet, being one of the Leet. Deziners, shall be distrained through all the Jurisdiction of the Leet, though he be of another Dezin. *11 Co. 45. a. 11 H. 4. 89.*

But where one has a Leet within his Manor, Manor. he can't distrain out of his Manor. *4 E. 3. 26.*

For one cannot distrain out of the Precinct of Precinct. the Court that orders it. *47 E. 3. 12.*

But he may distrain in any Place within the Jurisdiction of the Court. *Fitz. Avowry 194, 225.*

Nor can any be distrained that are out of the Jurisdiction of the Court. *Stat. Marl. cap. 2.*

But the Sheriff may distrain the Goods of any House, &c. Man, at any Place within his County, in another Man's House or Ground, as well as the Owner's. *Vide 1 Roll. Abr. 670.*

And for a Tax by Parliament, a Distress may Vill. be justified throughout all the Village. *11 H. 7. 18 E. 3. 11.*

And one may seise a Heriot-service in any Any Place. Place where he finds it, though not within his Fee. *6 E. 3. 208.*

So if one distrains Cattle, and puts them in Pound, and then takes them out, he may distrain, or take them again in any Place. *24 H. 6. 18.*

Yet for Rent or other Thing due for any Other Lands, Lands or Tenements a Man cannot distrain but &c. upon the same Land, &c. charged therewith:

But

But if he comes to distrain, and the Owner seeing his Purpose drives away the Beasts, or carries out the Goods in his View, he may well pursue; and if he take it presently on such fresh Pursuit, tho' in another's Ground or House, or in the Highway, the Taking is lawful, let who will be the Owner of the Goods. *Vide* 11 H. 74. 33 H. 6. 52. 34 H. 6. 2 E. 4. 6. *Plowd.* 38. 1 *Roll. Abr.* 671. 1 *Inst.* 161. 2 *Inst.* 132.

But by *Stat.* 11 Geo. 2. cap. 19. Lessors or Landlords, or Persons impowered by them, may take and seise as a Distress for Arrears of Rent, any Cattle or Stock of their Tenant, feeding or depasturing upon any Common appendent or appurtenant, or any ways belonging to all or any Part of the Premises. *See the Sequel of this Clause in the next Section of this Chapter; and see more to this Purpose in this Section.*

So if the Lord distrain within his Fee, and the Tenant drives them out of his Fee, he may take them again in any Place. 44 E. 3. 29.

So where a Bailiff attaches a Horse which is rescued and carried into another County, he may on fresh Suit take him again in any County. 33 H. 6. 52. and 55. 34 H. 6. 18. *Plowd.* 38.

Inns, &c.

If a Man come into a common Inn, his Goods or Beasts shall not be distrained there, for that would be very prejudicial to the publick Good. 3 E. 3. *Distress* 19.

Yet Cattle coming to London, to make Profit thereof (for so was the Pleading) were distrain'd in a Close they were lodg'd in on the Road for Rent of the Land, and adjudg'd a good Distress. 2 *Lutw.* 1165. 3 *Lev.* 260. *Vide* 3 *Cro.* 549, 628.

But afterwards on a Bill in Chancery it was decreed, the Owner should be repaid the Value of his Cattle, and all his Charges both in Law and Equity.

But that was because the Landlord had been guilty of a Fraud, by encouraging and giving Leave to the Owner to put in his Cattle, and then

then distraining them contrary to the Faith of his own Leave so given. 2 *Vern.* 129, 130.

If one put his Cattle into Land charged with Levant and a Rent-charge, they may be distrain'd upon the Couchant. Land, tho' neither *Levant* or *Couchant* there; *contra* if they escape. 15 *H.* 7. 17. *Vide* 2 *Leon.* 7. 2 *Vern.* 131.

The Lord may enter the House of his Tenant to distrain, if the Door be open. 38 *H.* 6. 26.

But if he finds the House fast with a Bar, &c. House. and break in to distrain, it is wrongful. *Fitz. Distress* 21.

The Lord distrains the Cattle of the Patron Glebe within his Glebe. *Vide* 33 *H.* 6. 35.

A Man cannot distrain but in the Land, &c. leased, except the Lessee grants it may be taken on other Land, &c. 9 *H.* 6. 9.

Fish in a Pool or Pond cannot be distrained. Pool. 1 *Cro.* 188.

But *vide Dyer* 117. A Distress for an Annual River. Sum upon the River *Thames*.

And see and note the Difference where Cattle, &c. are distrainable or not, when put by the Owner, &c. into any Place, and when they escape thither. *Lutw.* 1579, 1580. 2 *Vern.* 131.

But whatever has been said in this Section, or may be met with hereafter in this Treatise, as adjudged in Regard to distraining off the Premises, or breaking open Doors, the Reader must carefully consider the Extension of the Landlord's Power as to this Matter, by Stat. 11 *Geo.* 2. *cap.* 19. which enacts, That in Case the Tenant or Lessee, when any Rent is payable, fraudulently or clandestinely conveys or carries off his Goods, to prevent the Landlord from distraining, the Landlord, (in *England*, *Wales* or *Berwick*) or Person lawfully impowered by him for that Purpose, may within thirty Days next after such conveying, &c. seize such Goods, &c. wherever found, as a Distress, and dispose of the same as if distrained on the Premises, unless such Goods, &c. before such Seizure,

sure, were sold *bona fide*, and for a valuable Consideration, to a Person not privy to such Fraud.

And by the same Act, Tenants fraudulently carrying off, &c. and Persons wilfully and knowingly assisting therein, or in concealing any Part, forfeit double the Value of such respective Goods, to be recover'd by Action of Debt, &c. and where such Goods do not exceed the Value of fifty Pounds, the Landlord or his Servant may exhibit a Complaint in Writing before two or more Justices residing near the Place whence the Goods were removed, or where found, who may * summon the Parties, and examine the Fact and all proper Witnesses upon Oath or Affirmation, and in a summary Way determine whether guilty, &c. and of the Value of the respective Goods; and upon full Proof, may by Order under Hands and Seals, adjudge Offenders to pay double; and on Neglect after Notice, may levy by Distress and Sale, &c. or for want thereof commit to the House of Correction for six Months, unless the Money be sooner satisfied. But there lies an Appeal to Sessions; and where the Appellant, with one or two sufficient Sureties, enters into a Recognizance in double the Sum, with Condition to appear at Sessions, the Execution of the Order shall in the mean Time be suspended.

But the most remarkable Instance of Remedy for Landlords, is a power given them and those employed by them, by the same Act, where such Goods are put into any House or Place lock'd up, to call to their Assistance a Peace-Officer in the Day-time, to break open and enter such House, &c. and seize such Goods, as if they had been in an open Field: But if it be a Dwelling-house, there must first be an Oath made before a Justice of Peace of a reasonable Ground to suspect that such Goods are therein. The Act does not say whether the Justice or the Landlord shall judge of the Reasonableness of such

* For the Form of the Summons to the Tenant, and the Adjudication, see *Barlow's Justice* 177, 178.

such Ground of Suspicion; nor does it say that the Justice shall grant his Warrant for this Purpose; But it seems a reasonable Construction that the Justice shall do both.

SECT. V. *What Things may not, and what Things may be distrained.*

SUCH Things of which no Replevin lies What may cannot be distrained, because they cannot be not be di- known again; as Money cannot be distrained, strained. unless it be in a Bag sealed. 22 E. 4. 50. *Fitz. Distress* 14. 1 *Roll. Rep.* 59.

Fishes in a Pond cannot be distrain'd. 1 *Cro.* 188. Nor Poultry. 2 *Inst.* 133.

Cattle of the Plough shall not, if there be other Distress sufficient besides. *Dyer* 312. *Co. Lit.* 47.

An Anvil in a Smith's Shop shall not. 14 *H.* 8. 25.

Nor a Mill-stone that is severed for pricking, &c. *Ibid.*

Nor any Tools or Instruments of a Man's Trade. *Co. Lit.* 47.

Nor the Books of a Scholar. *Ibid.*

Nor a Man's Wearing Apparel. 2 *Inst.* 133.

Nor a Garment or Cloth in a Taylor or a Weaver's Shop 22 E. 4. 40. 10 *H.* 7. 21. *Co. Lit.* 47.

Nor Sacks of Corn or Meal in a Mill. *Co. Lit.* 29, 47. or in a Market. *Ibid.*

Nor Corn growing, nor after it is ground. 18 E. 3. 4.

Nor a Horse in a Smith's Shop, or in a Hostry or Inn. *Ibid.*

Nor while the Rider is on his Back, i. e. for Rent. *Vide Fitz. Restous* 14. *Cro. El.* 550.

Sed vide contra for Damage-feasant. 1 *Vent.* 36. 1 *Sid.* 440. *Quere.*

Sheaves or Shocks of Corn, &c. not in a Waggon or Cart cannot be distrained, because there

there can be no Return, nor does a Replevin lie of them. 2 H. 4. 15. 22 E. 4. 50. 11 H. 7. 14. 21 H. 7. 39. 18 E. 3. 4. *sed vide* Stat. 2 W. & M. cap. 5. *post*.

Also by the Distress and Carriage there would be Loss and Damage by shedding, &c. 1 Roll. Abr. 666.

Cattle put into *Black-Acre*, and straying into *White-Acre*, for Default of Inclosure, cannot be distrain'd. *Dyer* 365, and 317. 39 E. 3. 3.

For no Default was in the Owner of the Cattle. *Ibid*.

Cattle deliver'd by the Sheriff to the Tenant in Dower for Seisin of Rent, shall not be distrain'd for Arrears of Rent of the same Lands. 40 E. 3. 22.

Yarn brought on a Horse for a Neighbour to weigh, cannot be distrain'd, because it was brought thither only for a special Intent. *M.* 39, 40 *Eliz.* in *C. B.* adjudg'd. *Vide Cro. El.* 596. *Salk.* 250.

Nor any Thing that is in Custody of the Law, while it so continues; as Things distrained Damage-feasant, Goods taken in Execution, &c.

Stat. 8 Anne,
cap. 17.

" But by Stat. 8 Anne, Goods, &c. taken in Execution may be seised by the Landlord for Rent, if only a Year due. And if any Tenant removes his Goods clandestinely, &c. the Landlord may within five Days after seise, &c. and sell. *Proviso*, not to seise or take Goods, &c. sold *bona fide* for valuable Consideration before Seizure made.

But this Time of five Days is enlarg'd to thirty Days by Stat. 11 Geo. 2. cap. 19. which see cited in Part, above, *Seet.* 4.

By the Stat. *de Distractione Scaccarii*, 51 H. 3. none shall be distrain'd by the Beasts that Gain, *i. e.* manure his Land, nor by his Sheep, but until another Distress or Chattels sufficient be found, (except for Damage-feasant) which extends to all Distresses, as well at the Suit of the King, as of a Subject. 2 *Inst.* 133.

But no Distress can be taken on the King's Lands while in his Possession.

Nor can a covenable Distress be made of Armour or Apparel, or Jewels, so long as there are others sufficient. Nor of Sheep, Saddle-Horses, Beasts of the Plough, Poultry or Fish. 2 *Inst.* 133. *sed Quere.*

Nor can two Distresses be taken for one and the same Rent. *Cro. El.* 13. *Mo.* 7.

Except there were not sufficient at the Time of first taking. *Vide Lutw.* 1536.

Yet by the Stat. 17 *Car.* 2. *cap.* 7. where the Cattle, &c. distrain'd are not of the full Value of the Arrears for which they are distrain'd, the Party, his Executors and Administrators, may distrain again.

All such Things of which a Replevin lies, and which may be known again, and restor'd to the Owner intire, and are not *Feræ Natura*, may be distrain'd. 1 *Roll. Abr.* 667. What may be distrain'd.

As Money in a seal'd Bag. 22 *E.* 4. 50. 1 *Roll. Rep.* 59.

So may a Cart or Waggon full of Corn or Grain. *Ibid.* 2 *H.* 4. 15. 2 *Inst.* 82. 1 *Jo.* 197. 2 *Mod.* 61.

Or a Horse laden with Sheaves, &c. 22 *E.* 4. 50.

And other Goods may be distrain'd besides Cattle. 18 *E.* 3. 4.

Also if a Horse be laden with Sheaves, it seems the Horse only or Sheaves only may be distrain'd for Services. 1 *Roll. Abr.* 667.

And tho' a Horse with the Rider on him cannot be distrain'd for Rent, yet it seems he may be Damage-feasant, and may be lead to the Pound with the Rider on its Back. 1 *Vent.* 36. 1 *Sid.* 440. Horse and Rider, &c.

So Horses, &c. drawing a Cart loaden, may be severed from it, and distrain'd for Rent-service. 1 *Sid.* 422, 440.

So tho' there be a Servant or other Person in the Cart. 1 *Vent.* 36. 2 *Keb.* 529, 595, 631.

Yet it has been held otherwise for Rent, tho' allow'd for Damage-feasant. *Vide Cro. El. 7. 8. Mar. 91.*

Stacks.

And tho' formerly one could not distrain for Rents or Services, any Hay or loose Corn in Heaps, or Stacks, or in the Straw, *vide Fitz. Avowry 189. 1 Roll. Abr. 667. 15, &c.* yet now by Stat. 2 W. & M. "Any Person having any Rent Arrear due upon any Lease or Contract, may seise (or distrain) any Sheaves or Cocks of Corn, or Corn loose, or in the Straw, or Hay in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise, upon the Lands charg'd with such Rent, and lock up or detain the same, where found, as a Distress replevied. *Vide touching the Act, and that of 8 Anne, cap. 17. more at large, post.*

Corn and other Fruits of the Earth were not distrainable until severed; but now by Stat. 11 Geo. 2. cap. 19. all Sorts of Corn and Grass, Hops, Roots, Fruits, Pulse or other Product whatsoever, growing on the Premises may be distrained for Rent; and the Landlord, &c. may cut, &c. when ripe, and lay in a proper Place on the Premises; and if there be no proper Place there, then in any other Place, as near as may be, which he shall hire or procure, and in convenient Time appraise, &c. towards Satisfaction of Rent, and Charges of Distress, Appraisement and Sale. This Appraisement must be when the Goods are cured. Disputes concerning the Expence of gathering in of Harvests, Curing, &c. will probably bring in a plentiful Harvest to some Gentlemen of the Law. The Tenant is to have Notice of the Place where deposited, &c. within a Week after; and if he pay or tender the Rent, and Costs and Charges before the Produce is ripe, cut or gathered, the Distress is to cease.

SECT.

S E C T. VI. Of Excessive Distresses.

A Distress of more than the Value could not be said excessive for the Expences of Knights of Parliament, because the King was in a Manner Party. 13 H. 4. *Fitz. Avowry* 239. 2 *Inst.* 107, 167. Not Excessive.

And no Distress could be said excessive that was taken for Homage or Fealty, because of the high Esteem thereof in Law. 27 *Aff. pl.* 51. 28 *Aff. pl.* 50. 42 E. 26. 4 Co. 8. b. 2 *Inst.* 107.

So if one distrain four Horses and a Cart for 2 s. Rent, this is not excessive, because of the Entirety, they being all fixed to the Cart. 8 H. 4. 15. 20 E. 4. 3. 2 *Vent.* 183. 2 *Inst.* 107.

And so 'tis said of a Fold or Flock of Sheep, i. e. where they are entire, and cannot well be separated. 20 E. 4. 3.

But if 40 several Sheep are taken for 2 d. or 16 Oxen for 9 d. this is excessive, because they are several. 41 E. 3. 26. Excessive.

So if two Oxen are taken for four Pair of Gloves, or 20 Sheep are taken, ten for one Pair and ten for another, this is excessive. 29 E. 3. 24. adjudg'd.

If the Lord distrain a Horse or an Ox for 1 d. if no other Distress were on the Land, it is not excessive; but if Sheep or Swine, &c. were there at the Time of taking, it is an excessive Distress, because he might have taken a Beast of less Value. 2 *Inst.* 267.

Note; By the Statute of *Marlbridge*, made 52 H. 3. cap. 4. Distresses must be reasonable, and not too great. And by the Stat. *De Distractione Scaccarii*, made 51 H. 3. If the Lord take an unreasonable Distress, an Action lies on that Statute against him. Stat. *Marlbr.* & *Distractione Scaccarii.*

But an Indictment or Information will not lie against him for taking such unreasonable Distress, because only a private Offence. See the

Case of *the King and Ledginham*. 1 Mod. 71, 288. 1 Lev. 229. Ray. 205. 1 Vent. 104.

Notice.

If the Lord distrains for Rents or Services, he need not give Notice to the Tenant for what he distrains; for the Tenant by Intendment of Law knows what is in Arrear for his Land. 45 E. 3. 9.

And so it is where the Lord distrains for an Amerciament in a Leet. *Ibid.*

For Notice is not necessary, where the Matter is presum'd to be known without it. 1 Salk. 457.

The Bailiff that distrains, ought to give Notice in whose Right it is. See *Bro. Distress* 78.

But tho' a Man distrain for one Thing, yet when he comes into a Court of Record, he may avow for another. *Bro. Distress* 62.

What and how Notice shall be given before the Distress sold, *vide* the Stat. 2 W. & M. *infra*.

Affise de Sovent Distress.

If the Lord or another distrain'd several Times for Rent or Services where none in Arrear, the Tenant may by the Common Law have an *Affise de Sovent Distress*, F. N. B. 178. f. But if he distrain'd for Homage or Fealty so often that the Tenant could not manure his Land, yet the Tenant could not have that Action. 4 Co. 8. b.

This Action lay at Common Law, in which the Writ was general, and the Count special, and the Judgment therein was not that the Defendant should recover Seisin for that he had before, but that he should hold the Lands *absque Multiplici Distractione*. 8 Co. 50. a. b.

Wallis & Savil.

And it has been commonly held that two Distresses cannot be taken for one and the same Cause; and so is the Case of *Wallis and Savil* in *Lutw.* 1535, &c. in Trespass, the Declaration was for taking his Cattle, &c. such a Day, and other Cattle the same Day; and a Plea in Bar by Demise of Part of a Rectory reserving Rent, and that 20 l. was in Arrear, &c. and so justifies the first Taking for 15 l. and the latter for the Residue; and on Demurrer thereto, Judgment was for the Plaintiff.

Because

Ch. I. §. 6. Of Distresses.

21

Because the second Distress was not lawful, for one cannot have two Distresses for one and the same Rent, and it was his Folly he did not take a sufficient Distress at first. *Vide Cro. El. 13. Mo. 7.*

And the Reporter queries, whether the second Distress in that Case had been justifiable, though it had been pleaded, that at the Time of taking the first Distress there was not a sufficient Distress on the Land demised, and that the first Distress was but of such a Value, &c.

But with Submission to that, and some other late Judgments, I think they are ill founded, especially since the Stat. 17 Car. 2. cap. 7. which Stat. 17 Car. 2. cap. 7. enacts, " That where the Cattle distrain'd are " not of the full Value of the Arrears of Rent, " &c. for which they are distrain'd, the Party, " his Executors and Administrators may distrain " again.

And it is admitted in the Case of *Vasper* and *Death. Eddows*, *Salk. 248.* That where a Distress dies, the Distrainer may distrain again. See 3 *Cro. 162.* 2 *Lev. 174.* *Cro. Car. 148,* 2 *Inst. 107.* 13 *H. 4. 17.*

But *per Holt*, Ch. Just. If a Distress dies in Pound, the Action is reviv'd, for the Distress failed by the Act of GOD. *Aliter* where it escapes, unless it be made appear the Plaintiff was in no Default. *Salk. 248.* *Escape.*

Quere, Of a Distress rescued, if the Distrainer may distrain again. *Distress rescued, &c.*

If a Distress be made of Goods or Cattle without Cause, the Owner may rescue them before they are impounded. *Vide Co. Lit. 47. b. Salk. 247.*

But if a Distress taken without Cause be impounded, the Owner cannot break the Pound, and take them out, because they are in Custody of the Law. *Ibid. N. Benl. 30. 1 And. 31.*

Yet if one takes Cattle as Damage-feasant without Cause, and puts them in a Pound, and the Owner makes fresh Suit, and finds the Door

unlock'd, he may justify the Taking out the Cattle in *Parco Fracto*. *Co. Lit.* 47. *b.* *F. N. B.* 100. *Winch* 80, 81. *Salk.* 247.

But where one distrains my Cattle without Cause, yet a Stranger of his own Head cannot rescue them from him. 39 *E.* 3. 35. *b.* *F. N. B.* 102. *E.*

Yet if one distrains my Cattle, together with the Cattle of *J. S.* sans Cause, either *J. S.* or I may justify the Rescue of all the Cattle. 39 *E.* 3. 35. *per Thorp.* *Vide* 1 *Roll. Abr.* 673. *Q.*

Commoner.

A Commoner may distrain a Stranger's Cattle, and avow shewing a Damage to himself, or have an Action on the Case; if he can alledge any Damage to himself, as that he could not have his Common in *tam amplo modo quam debuit*. 3 *Lev.* 104.

If a Commoner puts his Sheep into the Common, and they, together with the Sheep of *B.* who has no Right of Common there, are distrained Damage-feasant, and in one Flock chased towards the Pound, *A.* may stop them all, and drive them to a convenient Place to sever his Sheep from the Rest, *Cro. Jac.* 568. 1 *Roll. Rep.* 163. and said by *Dodr.* he might drive all back into the Common again till severed. But Note, the Pleading therein was held ill, and therefore Judgment against him.

If one coming to distrain Damage-feasant, sees the Beasts in his Soil, but the Owner, on Purpose to prevent it, chases them out before they are taken, the Owner of the Soil cannot distrain, or if he do, the Owner of the Beasts may rescue them; for the Beasts ought to be Damage-feasant at the Time of the Distress. *Co. Lit.* 161.

Where a Distress taken in the King's Highway for Services, &c. may be rescued, *vide Cro. El.* 710. and *Stat. Marl.* cap. 15. 2 *Inst.* 131. 1 *And.* 71, 72.

And where Cattle must be Levant and Couchant before they can be distrain'd for Rent. *Vide Lutw.* 1577 to 1581.

And

And Note; by the Stat. 2 W. & M. Sess. 1. c. 5. Stat. 2 W. & M. upon any Pound-breach or Rescue of Goods or Cattle distrain'd for Rent, the Party grieved in a special Action on the Case shall recover his treble Damages and Costs. *Vide post.*

See 5 Mod. 362. and Salk. 248. An Anchor, Goods privileged. Sails and Cable of a Ship distrain'd for Toll or Port-Duties, and *ibid.* 250. That Goods deliver'd to a Tradesmen to be manufactured, are not distrainable for Rent; and 249. That Goods deliver'd to a common Carrier that carries them for Hire, are privileg'd from a Distress whilst in his Custody. And so it seems of Goods in Possession of a Stage-Coach Driver, if the Master takes a Hire for their Carriage. See Salk. Rep. 282, 249, 250.

But Note; in 5 Mod. 362. it is said, and not deny'd, though many Things are privileged from a Distress, as a Horse on which one rides, a Carrier's Horse and Goods, a Horse at a Smith's Shop, Cloaths at a Taylor's Shop, &c. because not fit that the Rent of a Stranger should be paid with such Things. Yet this must be understood where there are not Goods sufficient besides to be distrain'd. For, *Si summa quæ requiritur non ex aliis exurgit, nec arantibus parcendum est.*

SECT. VII. How a Distress is to be used, &c.

HE that distrains any Things that have Life Impounding (as Cattle, &c.) ought to put them in a in Pound Pound Overt, that so the Owner may resort to Overt, feed them; for in that Case the Owner is to keep them at his Peril. Co. Lit. 47. b. 2 Inst. 106.

Yet the Distrainer may put them in a Pound Or Covert. Covert or Close; but then he shall keep them at his Peril, and yet shall not have any Satisfaction for his Trouble or Charge. *Ibid.*

Quid.

A Pound Overt is a Pinfold made with Timber or Stones, &c. for such Purposes; or the Close of him that distrains of a Stranger with his Consent. A Pound Covert or Close, is when Goods, &c. are impounded in a House, &c. *Vide Co. Lit. 47.*

6 *Mod.* 215.Stat. 2 *W. & M.*

By the Common Law a Man who distrained was bound to remove his Distress, if the Tenant's Interest continu'd, or else the Lord became a Trespasser by his detaining Possession of Part of the demised Premises. But the Statute which made Corn in Sheaf, &c. distrainable, enacted, That it might be secur'd upon the Land.

And now by 11 *Geo. 2. c. 19.* Persons taking Distress for Rent, may impound and secure the Distress in such Place or Part of the Premises as shall be most fit; and Egress and Regress to view, appraise, buy, carry off, &c. are given by this Act, with like Remedy for Pound Breach and Rescous, as in other Cases by former *Statutes.*

Goods, &c.

And if a Man distrains dead Goods, as Utensils of a House, or such like, which may take Damage by Wet or Weather, &c. he ought to impound them in a House, or other Pound Covert or Close: For if he impound them in a Pound Overt he shall answer for them. *Co. Lit. 47. b.*

Note; At Common Law a Man might have driven or carried a Distress whither he pleased, which was very mischievous; because if Cattle were taken, the Owner was bound to find them and give them Sustenance if impounded in Pound Overt; and yet (being esloined into another County) by Intendment of Law he could not tell where they were; and whether live or dead Goods, &c. he could not tell where to have a Replevy. 2 *Inst. 106.*

Stat. *Marlb.*

And therefore by Stat. *Marlbr.* it is enacted, "That none shall cause a Distress to be driven out of the County where taken, on Pain of Fine and Ransom, &c. which Stat. was confirmed by the Stat. of *Westminster.* 2 *Inst. 191.*

And

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55

And by 1 *Ed* 2 *P. & M. cap. 12.* " No Distress 1 *Ed* 2 *P. &*
" shall be driven out of the Hundred, Rape, *M. c. 12.*
" Wapentake or Lathe where taken; except to
" a Pound Overt within the same Shire, not
" above three Miles distant from the Place where
" taken; and no Distress shall be impounded
" in several Places, whereby the Owner shall be
" constrained to sue several Replevins, on Pain
" that every Person offending shall forfeit to the
" Party grieved 5 *l.* and treble Damages.

But Note; He that will take Advantage of
either of the said Acts, ought to do it by Way of
Action on the Statute, so as to entitle the King
to a Fine; and cannot do it by Way of Trespass
on the Case, or a Plea in Bar, &c. and a Driving
into a City or Vill that is a County of itself,
though within the same Country, is a Driving
out of the County. *Vide 3 Lev. 48. 2 Inst. 131,*
191. Goldsb. 100, 101. Godb. 11. And if the
Distress be impounded in several Liberties, it is
an Offence within the Words, *several Places*, of
the last Act. *Vide Noy 52. Dyer 177. b.* But
where three Persons distrain a Flock of Sheep,
and severally impound them in three several
Pounds, yet they shall forfeit but one five
Pounds, and one treble Damages; as adjudged
in *Cro. El. 480. Mo. 453. Goldsb. 45. and Noy*
52. But in *Noy 62.* it is said by *Fenner*, That
if the Action be brought against them severally,
each of them shall pay five Pounds. *Quere.*

And whether the Distress be of live Things
or dead, they cannot be impounded in any Pound
either Overt or Covert, above three Miles from
the Place of Taking, and that within the same
County. *Co. Lit. 47.*

If one takes a Horse for a Distress, and puts Horse
it in Pound Overt, and the Horse leaps three strangled.
Times over the Pound, which is as high as it is
used to be; wherefore he takes the Horse and
ties him with a Halter to a Post in the Pound,
where he strangles himself, yet this will not ex-
cuse

cuse the Distrainer, but an Action of Trespass lies against him. 27 *Aff.* 64.

Cow dies.

If one takes a Cow for a Distress, he cannot milk her; for though she be the better for it, yet he ought not to do good to the Owner without his Consent; and if it had perished for not Milking, &c. yet the Distrainer may distrain again, and so he is at no Damage thereby. *Vide Cro. Jac.* 147. *Telv.* 96. *Noy* 119. 1 *Roll. Abr.* 673, 879. *Cro. El.* 162. *Cro. Car.* 148. 2 *Leon.* 174.

Hog escapes.

One distrained a Hog Damage-feasant, and put it in a common Pound, from whence it escap'd, and then brings Trespass against the Owner for the Damage done. But *Holt Ch. Just. &c.* held it did not lie; for it was the Plaintiff's Fault to put the Hog in a Pound which could not hold him: Also it is the Distrainer's Pound (*vide F. N. B.* 100.) who might have put him in any other Place, even in a Pound Covert. If a Distress dies in the Pound, the Action revives; for the Distress failed by the Act of GOD; but it is otherwise where it escapes, unless it be made appear the Plaintiff was in no Default; for his Default ought not to intitle him to another Action, nor subject the Defendant to a double Punishment for the same Cause, *viz.* Loss of his Hog and this Action. *Salk. Rep.* 248.

Custom.

Hides tann'd.

If there be a Custom in a Town, That if a Butcher kill any Beast there, and sells the Flesh in the Market, he shall pay Two-pence for every Hide, and that the Bailiffs may distrain the Hide, if denied: Admitting the Custom good, and that a Hide so distrain'd is well taken, yet the Bailiffs cannot tan the Hide to prevent its being rotten; for the Custom to distrain the Hide does not enable them to tan it, for the Property is *quasi* altered thereby, the Marks by which it may be known again being taken away, so that he cannot have it again, or replevy it in Kind. *Cro. El.* 786. *Vide* 2 *Roll. Abr.* 562.

It is indeed there said by *Popbam*, That in some Cases a Man may meddle with and use a Distress, where it is for the Benefit of the Owner; as if one distrains Armour, he may cause it to be scoured to avoid Rust; or if Raw Cloth, he may cause it to be fulled, &c. but this seems not Law, as is evident from the Case of the Cow milk'd *supra*. And in 1 *Vent.* 37. is a Case cited by *Twisden*, where one distrain'd a Trunk for Rent, and being informed there were Things of Value in it, he caused it to be corded to prevent Damage; but for this Care, &c. he was adjudged a Trespasser *ab initio*.

It frequently happened that Landlords, or those employed by them in taking Distresses, fell into some Mistake in the Management or Disposal of them; and the Law construed him upon the whole a Trespasser *ab initio*. To remedy this Hardship, it was enacted by Stat. 11 *Geo.* 2. *cap.* 19. That where Distress is made for Rent justly due, and any Irregularity or unlawful Act shall be afterwards done by the Party distraining, or his Agents, the Distress itself shall not therefore be deemed unlawful, nor the Party a Trespasser *ab initio*; but the Party grieved may recover Satisfaction for the special Damage, and no more; provided that when the Plaintiff recovers, he shall have full Costs of Suit; but he is not to recover if Tender of Amends has been made him before the Action brought; and in all such Actions the General Issue may be pleaded, and double Costs for Defendant, Nonsuit, &c.

If Turfs lie on a Common Damage-feasant; Turfs burnt. though for this a Commoner may distrain them, yet he cannot burn them. *T. Jones* 193.

A Man cannot work a Distress, because he Distress has no Property therein, nor Possession *in Jure*, worked. but only a bare Power by Act of Law to take it as a Pledge or Security, &c. *Owen* 124. *Dyer* 280.

Return' irrevocable.

So If one has the Distress on a Return irrevocable, yet he cannot work it; for the Judgment is to remit it to the Pound, *ibidem remansur*, &c. Owen 124.

Withernam.

But Cattle taken upon a *Withernam* may be worked and used; as if they be Cows he may milk them, or if Oxen or Horses, reasonably work them; because in that Case they are delivered in Lieu of the Party's own Cattle. *Vide Owen 46. 1 Leon. 20. 3 Leon. 235, 236.*

Not remov'd.

Where a Distress cannot be removed, but must be secured on the Land or Place where taken, see the Stat. 2 W. & M. Sess. 1. cap. 5. *infra.*

Sale of Distresses.

If a Lord takes a Distress for an Amercement in a Leet, he may impound or sell it at his Pleasure. 8 Co. 41. 1 Roll. Rep. 76. Noy 17.

Amercements.

A Distress taken in a Court-Leet may be sold. *Vide 3 H. 7. 4.* So a Distress taken for a Fine for not repairing Highways, may be sold. *Per Stat. 18 Eliz. cap. 10.*

Statute.

Where a Statute says, That a Penalty shall be levied by Distress, a Power to sell is thereby also given without further Words. *T. Jo. 25. 6 Mod. 83.*

But tho' the Words in Acts of Parliament (*To be levied by Distress*) imply a Sale, and give the Officer distraining a Power to sell; yet if such Officer sells on Credit, when he might for ready Money, he is immediately chargeable to the Party for whom the Distress is taken. *6 Mod. 83.*

By-Laws.

A Distress and Sale for Breach of a By-Law is ill, for a Corporation can only distrain for Breach of a By-Law, except there be also a Custom to sell. *3 Lev. 281. Co. Lit. 145.*

Custom.

Also a Distress is taken but as a Pledge or Security for another Thing due; and by the Common Law, the Taking did not alter the Property, and therefore the Party could not sell it; and such Statutes as have enabled the Distrainer to sell, &c. do not extend to Distresses taken for Breach of By-Laws.

By

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By the said Stat. 2 *W. & M. Sess. 1. cap. 5.* it is enacted, " That when any Goods or Chattels shall be distrained for any Rent reserved and due upon any Demise, Lease or Contract whatsoever, and the Tenant or Owner of the Goods so distrain'd shall not within five Days next after such Distress taken, and Notice thereof, with the Cause of such Taking, left at the chief Mansion-House, or other most notorious Place upon the Premises, charged with the Rent distrained for, replevy the same with sufficient Security to be given to the Sheriff, according to Law; then after such Distress, and Notice as aforesaid, and Expiration of five Days, the Person distraining shall and may, with the Sheriff, or Under-Sheriff of the County, or the Constable of the Hundred, Parish or Place where such Distress shall be taken, (and who are thereby commanded to be aiding and assisting therein) cause the Goods and Chattels so distrained to be appraised by two sworn Appraisers (whom such Sheriff, Under-Sheriff or Constable, are thereby impowered to swear to appraise the same according to the best of their Understanding) and after such Appraisement made, may lawfully sell the Goods and Chattels so distrained for the best Price can be gotten, towards Satisfaction of the Rent for which they shall be distrained, and of the Charges of such Distress, Appraisement and Sale, leaving the Overplus in the Hands of the Sheriff, Under-Sheriff, or Constable, for the Owner's Use.

How Goods, &c. are distrainable for Rent, by Stat. 2 *W. & M.*

Notice to be. *Hob. 207. Lutw. 114, 215.*

When and how to be sold.

After Appraisement, &c.

" And, That it may be lawful for any Person having Rent due upon any such Demise, Lease or Contract, as aforesaid, to seize and secure any Sheaves, or Cocks of Corn, or Corn loose, or in the Straw; or Hay lying and being in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise upon any Part of the Land charged with such Distress;

May distrain Corn in Sheaves, or in the Straw, or Hay in a Barn, &c.

" and

And lock it up, &c. till replevied or sold.

" and to lock and detain the same in the Place
 " where the same shall be found, for or in the
 " Name of a Distress, until the same shall be re-
 " plevied upon such Security as aforesaid: Yet
 " so as such Corn, Grain or Hay, so distrained
 " as aforesaid, be not removed by the Persons
 " distraining to the Damage of the Owner
 " thereof, out of the Place where the same shall
 " be found and seized, but be kept there as im-
 " pounded until replevied, or sold in Default of
 " Replying within the Time aforesaid.

Action for a Pound-breach.

" And, That upon any Pound-breach or
 " Rescous of Goods or Chattels distrain'd for
 " Rent, the Person griev'd shall have a special
 " Action on the Case for the Wrong thereby
 " sustained, and recover treble Damages and
 " Costs of Suit against the Offender or Offen-
 " ders, in any such Rescous and Pound-breach;
 " any or either of them, or against the Owner
 " or Owners of the Goods distrained, in Case
 " the same be afterwards found to come to his
 " Use or Possession.

The Rent must be due.

" Provided, That in Case any such Distress
 " and Sale as aforesaid, shall be made by Virtue
 " or Colour of this Act, for Rent pretended to
 " be in Arrear and due, whereas in Truth no
 " Rent is arrear or due to the Person distrain-
 " ing, or to him, or those in whose Name or
 " Names, or Right, such Distress shall be
 " taken as aforesaid: That then the Owner of
 " such Goods and Chattels distrained and sold
 " as aforesaid, his Executors and Administrators,
 " shall and may, by Action of Trespass, or on
 " the Case, to be brought against the Person
 " or Persons so distraining, any or either of
 " them, his or their Executors and Admini-
 " strators, recover double the Value of the
 " Goods distrained and sold, together with full
 " Costs of Suit.

Penalty if not.

Stat. 8 Anne,
cap. 17.

And Note, by the Stat. 8 Anne, cap. 17. " No
 " Goods or Chattels taken in Execution, are to
 " be

" be remov'd from the Place where taken, before the Landlord be paid his Rent, if only one Year due.

" And if any Tenant remove his Goods, &c. clandestinely, &c. the Landlord may within five Days seise and sell the same for Rent arrear.

" *Proviso* not to seise or take Goods sold *bona fide*, for a valuable Consideration before such Seizure made. See above Sect. 4. in this Chapter, the Stat. 11 Geo. 2.

" And Goods seised or distrained by Virtue of this Act are made liable to Sales, and the Money to be distributed as the Act 2 W. & M. (*supra*) directs.

" And where Tenants *pur auter vie*, or Lessees for Years, or at Will, hold over, after their Leases or Terms expired, the Landlord may distrain after such Expiration, if within six Kalendar Months, and during the Landlord's Interest, and the Tenant's Possession. See the Stat. above, Sect. 2. in this Chapter.

" Nothing in this Act to prejudice the Right of the Crown, in levying, recovering, or seising of Debts.

See the several Statutes relating to *Distresses*, viz. *De Distractione Scaccarii*, 51 H. 3. *Marlbridge*, 52 H. 3. cap. 1, 2, 3, 4, & 15. *Westm.* 1. 3 Ed. 1. cap. 16, 17. *Westm.* 2. 13 Ed. 1. cap. 36, 37. *Articuli Cleri*. 9 Ed. 2. cap. 9. 1 & 2 P. & M. cap. 12. And the said Statutes 2 W. & M. Sess. 1. cap. 5. & 8 Anne, cap. 17.

See also the Statutes relating to *Avowries*, *postea*, at the End of that Title.

Note; If the Landlord lives at a Distance from his Tenant, or doth not care for the Trouble of distraining himself, he may empower another Person to do it in the following Form.

The

by 11th Geo. 2. Ch. 19
the time is enlarged
to 30 days

The Form of a Landlord's Warrant to distrain for Rent.

This Form
must be wrote
on Paper,
with a treble
Six-penny
Stamp on it.

KNOW all Men by these Presents, That I Thomas Browne of London, Gent. do hereby authorize and appoint Samuel South of, &c. to take any Person or Persons to his Assistance; and enter into the House of Charles Daniel, in, &c. and there make a Distress of all such Goods and Chattels as are in and upon the Premises, or any Part thereof, for twenty Pounds, for one Half Year's Rent due to me the said Thomas Browne at Lady-day last. And after the said Goods are so distrained, if the said Charles Daniel doth not within the Time limited by the Act of Parliament for that Purpose made, pay the said Rent, or replevy the said Goods, then and in such Case I do hereby authorize you the said Samuel South to cause the said Goods to be appraised, and according to such Appraisement to make Sale thereof to any Person or Persons as will buy the same; and to dispose of the Money arising by the Sale, in such Manner as by the said Statute is directed: And for your so doing this shall be your sufficient Warrant. Witness my Hand and Seal this thirteenth Day of April 1745.

Thomas Browne.

Witnesses,

A. B.

C. D.

For the Time
when you may
distrain, see
antea, Sect. 3.

When you enter the House of the Tenant whose Goods you are to seise, it will be proper to take hold on a Chair, or any other of the Goods of the said Tenant, and say, You distrain this and the Rest of the Goods in this House for so much Rent due to Mr. Thomas Browne at Lady-day last; and then proceed to take an Inventory of the Goods as follows:

*Form of an Inventory of the Goods distrained for
Rent in the House of Charles Daniel, April
13, 1745.*

In the Parlour.

Six Leather-Bottom Chairs, Wall-
nut-Tree Frames.

One Mahogany Dining-Table.

One large Pier Looking-Glass and
two Sconces in lacquered Frames.

A Stove-Grate, Steel-Fender, &c.

In the Dining-Room.

Six Chairs, &c.

Advantage if he can pay his Rent in Arrear, or replevy his Goods, &c.
before the five Days are expired.

After the Inventory is taken, then the Notice
of the Distress must be left in Writing with the
Tenant, or some of his Family in his Absence,
before Witness.

Notice of Distress to be delivered to the Te-
nant, a Copy of which should be kept
either by the Landlord or Person making
the Distress.

Mr. Charles Daniel,

Take Notice, That I have this Day seised
and distrained the * Goods and Chattels in
the above Inventory particularly mentioned † (by
Virtue of an Authority for that Purpose from
Mr. Thomas Browne your Landlord) for one
Fairfield in the Parish of F. in the County of S. and have impounded the
same in the publick Pound of the said Parish, &c. † The Words within
the Parenthesis to be left out when the Landlord distrains himself.

l. s. d.
The Inven-
tory may be
taken by the
Person who
distrains, there
being no Oc-
casion for an
Appraiser till
the End of the
five Days,
which is for
the Tenant's

* Or Cattle;
that is to say,
six Oxen, &c.
in and upon
the Lands of

Of Distresses. Ch. I. §. 7.

Half Year's Rent due and in arrear to me (or to the said Thomas Browne) on Lady-day last, for a House, &c. in ——— and have secured the said Goods and Chattels in the Dining-Room one Pair of Stairs in the said House; and that unless you pay the said Rent and Charges of Distress, or replevy the said Goods and Chattels within five Days from the Date hereof, they will be sold according to Law. Dated this 13th Day of April 1745.

Yours,

Charles White.

Or if the Landlord,

Thomas Browne.

A true Copy of the above Inventory and Notice was this 13th Day of April 1745. delivered to the above-mentioned Charles Daniel in the Prefence of us

*Edw. Ford.
Geo. Hall.*

To prevent any Disputes afterwards between the Landlord and Tenant, the Tenant may sign his Consent for a Person to stay in Possession, to be written under that Copy of the Inventory and Notice which the Landlord keeps for his own Use.

The Tenant's Consent for a Person to stay in Possession.

***M**R. Thomas Browne this 13th Day of April 1745. having distrained the Goods and Chattels mentioned in the above Inventory, for the Arrears of Rent due from me to him, as in the Title to the said Inventory is likewise mentioned, I do hereby Consent that John Hawk, on the Behalf of the said Thomas Browne, shall stay*

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stay and continue in the Possession of the said Goods and Chattels distrained, instead of their being otherwise secured on the Premises, until I have paid the Arrears of Rent, or until I have replevied the said Goods and Chattels, or until the five Days limited for doing the same be expired; and the said Goods and Chattels, &c. be appraised and sold according to the said Notice in these Beals to me given, whichever of them shall first happen; as Witness my Hand this 13th Day of April 1745.

Witness,
Edw. Ford,
Geo. Hall.

Charles Daniel.

If the Rent be not paid, nor the Goods replevied within the five Days of Notice, then such of the Goods and Chattels may be appraised and sold as will be sufficient to pay the Rent in Arrear and Charge of the Distress, &c.

The Appraiser's Oath, to be administered by the Constable.

YOU shall well and truly value and appraise the Goods and Chattels of Charles Daniel taken in Distress, and in the Inventory now shewn you particularly mentioned, according to the best of your Skill and Understanding.

So help you God.

We whose Names are underwritten do Value all the Goods in this Inventory at thirty Pounds ten Shillings; as Witness our Hands this 18th Day of April 1745.

Edw. Ford, } Appraisers.
Geo. Hall, }

D 2

In

In the former Editions of this Treatise, Replevins being improperly placed before Distresses, the Introduction was called Section the First; therefore to preserve the Sections in the same Order (they being often referred to one another) is the Reason why the following is called Section the Second.

CHAP. II.

SECT. II. Of Replevins by Writ.

The Definition and Derivation.

THIS Writ is brought to have Goods or Cattle, or other Things which have been distrained, either for Rent or any other Cause, returned or re-delivered, upon Security given to prosecute the Writ, and return the Goods, &c. if the Distraining shall be adjudged lawful; and it is called a Replevin from the Word *Replegiari* therein, which signifies a Re-delivery, or returning back to the Owner, upon Pledges or Security given: For thereby the Sheriff is commanded to deliver back to the Plaintiff, upon Pledges found, *his Goods or Cattle* so distrained, or *his Ox*, or *his Hive of Bees*.

A Diversity therein.

Note; Live Things are to be placed before Dead, if the Writ consists of both, and where more than one live Beast is distrained, the Writ says, *Averia sua* generally. And when more than one dead Beast or other Things are distrained, it says, *Bona & Catalla sua*. But when only one Beast or other Thing is distrained, the Writ must particularly express what it is; *Quoddam Fumentum suum*, or *quoddam Rete suum*, &c. Vide Reg. Brev. 81. Doct. Pl. 314. F. N. B. 68. Also if the Writ be *Averia*, and the Count is *de Bonis & Catallis*, it is not good, because the

the Count is larger than the Writ. 2 H. 4. 25.
Vide 3 Keb. 671.

This Writ is an Original issuing out of Chan- Nature of the
 cery, and is *Vicontiel* and a *Justicies* in its Na- Writ.

ture, empowering the Sheriff to do Justice there-
 on; as appears by the Words therein, *Et eum*
inde juste deduci facias, &c. and therefore it is
 not returnable. 2 *Inst.* 139, 140. Yet the Pro- Not return-
 ceedings thereon are removable into the King's able, but re-
 Bench or Common Pleas, by a *Pone*, brought movable by
 either by the Plaintiff or Defendant; but the *Pone*, and
 Defendant must assign the Cause of Removal in how.
 the *Pone*, though the Plaintiff himself may re-
 move it without Cause. *Vide F. N. B. 69, 70.*
 2 *Inst.* 339, 340.

And this Writ of Replevin lies for any Person Its Use and
 whose Cattle or Goods, &c. are distrained, upon Effect.
 his giving Security or Pledges to the Sheriff, that
 he will pursue the Action, and return the Goods
 or Cattle, &c. again, if the Distraining be ad-
 judged lawful: And if he does not pursue it ac-
 cordingly, or if the Distraining be found lawful,
 then the Defendant, commonly called the Avow-
 ant, *i. e.* he who avows or justifies the Taking of
 the Distress, shall have the Goods or Cattle, &c.
 he so distrained, returned to him again, by a
 Writ called *De Retorno Habendo*. *Vide post.*
Ch. 3. Sect. 6.

But if the Cattle or Goods distrained are not *Alias and Plu-*
 taken by the Sheriff upon the first Writ of Re- *ries Replevin.*
 plevin, the Plaintiff may have an *Alias*, and af-
 ter that a *Pluries Replevin*, *vel Causam nobis*
significes; the *Alias* being *verbatim* as the first
 Writ, only adding, *as we formerly commanded*
you, after, we command you. Neither of which
 Writs are made returnable at a Day. But the
Pluries, besides the Word *Pluries* instead of
Alias, is returnable on a Day certain, and has
 the Clause, *or signify to us the Cause*, therein
 inserted after, *as it is said, viz. or signify to us*
the Cause why you would not, or could not exe-

Property re-
turned on
the *Pluries*.

cute our Command formerly thereupon to you directed, &c. Vide Regist. Brev. 81.

In a Replevin by Writ, if the Process continue until a *Pluries* issue out of Chancery, and the Sheriff returns thereupon in *C. B.* That the Defendant claims Property, although no Day is expressly given by this Writ to the Parties, but to the Sheriff only, to excuse his Contempt for not serving the Process before; yet upon the Return of this Writ, the Parties may appear and plead, *viz.* The Plaintiff may declare, and the Defendant may plead to it, and it shall not be erroneous; for there is no other Writ to be served after this Writ; and therefore if the Parties might not plead thereupon, it would be a great Mischief. So if the *Pluries* be returned *Tres Mich'*, and nothing is done till *Pasche* afterwards; yet at this Term the Parties may appear and plead if they will. *1 Roll. Abr. 485. B. 581. Vide post.*

Return of *A-*
veria Elongat',
&c.

Capias in Wi-
thernam.

Alias, Pluries
and *Exigent.*

And if on the *Pluries* Replevin the Sheriff return, *That the Cattle are cloigned to Places to me not known, so that I could not deliver them to the Plaintiff*, then the Plaintiff in the Replevin may have a *Capias in Withernam*, which commands the Sheriff to take the Cattle or Goods of the Defendant, and detain them till the Cattle or Goods distrain'd are restored to the Plaintiff. And if a *Nihil* be returned on the first *Withernam*, then an *Alias* and *Pluries Withernam* shall issue; and if these are also return'd *Nihil*, then follows an *Exigent*.

Gage Deli-
verance.

Uncore detent'
in Issue and
Trial, &c.

Retorno Ha-
bendo.

Yet on the Return of the *Exigent* against the Defendant in Replevin he may gage Deliverance, *i. e.* find Pledges to make Deliverance of the Cattle distrained, if found against him: And if the Plaintiff shall declare upon an *Uncore detent'*, and go to Trial on the Right of the Cause of Distraining, if it be found for the Plaintiff, he shall recover his Costs and Damages; and if found for the Defendant, he shall have a *Retorno Habendo*.

But

But if upon the Premises aforesaid the Defendant appears, then no *Withernam* lies, but he shall gage Deliverance, or be committed: And the Plaintiff shall Count on an *Uncore detent*, and if found for the Plaintiff, that the Cattle or Goods are not delivered, he shall recover the Value and Costs and Damages; and if found for the Defendant, he shall have his Costs and Damages, and a *Retorno Habendo*. 1 *Brownl.* 168.

Defendant's Appearance.

Plaintiff's Count, &c.

And though the Writ in Replevin may be general *ut supra*, yet the Count or Declaration thereupon must be certain and particular, in setting forth the Numbers, Kinds and Qualities of the Cattle or Things distrained; for otherwise the Sheriff cannot tell how to make the Deliverance of the same.

Declaration in Replevin to be certain, &c.

Also in a Declaration in Replevin for taking of Cattle, if you do not name the Place where taken, the Declaration is naught, by Reason of the Uncertainty. *Hob.* 16. *Vide* 2 *H.* 6. 14: 35 *H.* 6. 40. 1 *Sid.* 10, 20.

It is also said, That the Sheriff's Delivery must be according to the Writ, (*i. e.* where the Species, Kinds or Qualities are therein express'd) as where the Writ is for Ewes, the Sheriff cannot deliver Wethers, or if it be for black Horses, he cannot deliver white. And that he is subject to an Action of the Case, if he mistakes or errs herein. *Alley* 33.

Yet some Books say, It is sufficient if the Count or Declaration in Replevin be certain to a general Intent, and needs not a particular Description of the Goods or Cattle distrained; for that such particular Certainty is to be shewn on the Defendant's Part in his Avowry, which requires a greater Certainty than the Count does; for the Avowry in Replevins is in the Nature of a Declaration. 7 *Rep.* 25. 1 *Show.* 170.

So of an Avowry.

But if the Count or the Avowry, or both be uncertain in describing the Kinds and Qualities of the Cattle, &c. the Sheriff may on a *Retorno Habendo* inquire into those Particulars, and re-

Certainty inquired on a *Retorno Habendo*.

turn the same accordingly. 1 Leon. 193. *Vide Show. 99.*

And note; A *Retorno Habendo* shall be awarded in every Case, where it appears the Defendant was in Possession of the Cattle, if they are delivered on the Replevin. *Cro. Jac. 519.* What is a good Return in a Replevin or *Retorno Habendo*, *vide 2 Leon. 67.*

Return thereof.

Mortua.

Scire Facias.

Pledges.

Sheriff's Return.

And if upon the *Retorno Habendo* the Defendant cannot have the Cattle, &c. returned again; as where the Sheriff returns thereupon, they are dead, &c. the Defendant may then have a *Scire Facias* against the Pledges of the Plaintiff; and if a *Nihil* be returned thereupon, he may then have a *Scire Facias* against the Sheriff himself, for Default of Pledges; for insufficient Pledges are no Pledges in Law. *Co. Lit. 145. 1 Brownl. 168. Vide infra of Pledges.*

If the Sheriff return a *Fugavit* into another County, or that he cannot have the View, or eloigned to Places unknown, or that the Bailiff of the Liberty has returned either an *Elongata*, or that they are impounded within the Rectory of S. it is said in all these Cases a *Witberniam* shall be awarded. *F. N. B. 68. G. 69. A.* And after this, three *Capias's* and an *Exigent*. 5 E. 4. 18. a. *per Danby.*

Deliberari feci.

Elongata, &c.

Plea of *Non cepit.*

In a Writ of Replevin for Beasts, &c. the Sheriff must either return a *Deliberari feci*, or something in Excuse thereof, as *Elongata*, or that no Body came to shew him the Cattle. 1 Lut. 581.

But he cannot return they were not taken, for that goes to the Point of the Writ, which the Defendant is to falsify (or traverse) and not the Sheriff. *Ibid.*

And the Defendant is not concluded by the Return of *Elongata* to plead *Non cepit*, because such Return was necessary, and the Sheriff could not avoid it. *Ibid.*

And as for that Reason no Action lies against the Sheriff for a false Return of *Elongata*, where he cannot make Deliverance; so the Defendant is not

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not concluded thereby to plead *Non cepit* to the Action, for he cannot falsify the Return. 1 Lut. 581.

And after *Elongata* and *Withernam*, if the Defendant pleads *Non cepit*, he shall have his Cattle again; and so he shall where he claims Property; for where the Taking or the Property is in Question, it is reasonable he should have his Goods again during the Dispute. *Ibid.* Claim of Property.

Note; The Plaintiff, *i. e.* he that brings the Replevin, must have the Property of the Goods or Cattle in him at the Time of the Taking or Distress made, if he will maintain his Replevin: For if the Defendant pleads it in a Stranger, and it be found accordingly, he shall have a Return without any Suggestion in Nature of an Avowry. And seeing it appears by the Verdict the Plaintiff has no Property, it shall be adjudged against him. 2 Lev. 92. Pleaded in a Stranger.

And note; Property in a Stranger may be pleaded either in Bar or in Abatement. *Salk.* 94. In Bar or Abatement.

Also a Plea in Abatement in Replevin (except that of Property) must suggest Matter for a Return; yet such Matter is not traversable. *Ibid.* 93, 94.

So *Prisel in auter lieu* pleaded must make a Suggestion or Avowry *pro Retorno Habendo*. *Ibid.* 94.

Note also, A Writ of second Deliverance is a Second Deliverance to the *Retorno Habendo*, but not to verance. the Inquiry of Damages. *Ibid.* 95. 3 Keb. 666.

Touching second Deliverances, *vide post.* § 2 Leon. 49, 174. 3 Leon. 235. 3 Keb. 31, 66, 76.

Touching *Withernams*, *vide post.* § 1 Leon. *Withernam*. 220. 2 Leon. 174. 3 Leon. 235, 236. 2 Keb. 550. *Salk.* 581, 582.

SECT. III. Of Replevins by Plaint.

HITHERTO of Replevins by Writ; we now come to Replevins by Plaint in the County-Court before the Sheriff, &c. for Goods and Replevins by Plaint.

Of Replevins by Plaint. Ch. 2. §. 3.

and Cattle, &c. may be replevied two Ways, viz.

1. By Writ *ut supra*, which is by the Common Law.

2. By Plaint *ut infra*, which is appointed by the Statute of *Marlbridge*, 52 H. 3. c. 21.

In the County-Court.

By that Statute the Sheriff *ex officio* may without any Writ deliver the Cattle so distrained, upon a Suit or Plaint before him in the County-Court, which is the more speedy Way for having the Cattle, &c. returned to the Owner, and therefore is the most usual.

Stat. Marlbr.

For by that Statute it is provided, "That if any Beasts be taken and wrongfully with-holden, the Sheriff, upon Complaint to him made thereof, may deliver them without Let or Gainsaying of him that took them, if they were taken out of Liberties; but if taken within any Liberties, and the Bailiffs thereof will not deliver them, then the Sheriff upon such Bailiff's Default shall deliver them.

Mischiefs thereby remedied.

Now the Mischiefs before this Statute were, *First*, When a Man's Beasts or other Goods were distrained or impounded, the Owner had no Remedy but by Writ of Replevin, whereby they were long detained from him. *Secondly*, When they were distrained and impounded in a Liberty that had Return of Writs, the Sheriff was driven to make a Warrant to the Bailiff thereof to make Deliverance, which wrought a longer Delay, &c.

Distresses how replevied.

For at Common Law the Sheriff could not enter into the Liberty in that Case. And *Thirdly*, When the Distress was taken without a Liberty, but impounded within. All which Mischiefs are hereby remedied. See 2 *Inst.* 139.

In Liberties.

And where the Distress is taken *extra Libertes*, and impounded within, the Sheriff upon Plaint made, may presently enter and make Deliverance without any Precept to the Bailiff of the Liberty. 2 *Inst.* 140.

Vide post.

Also by Virtue of this Statute, The Sheriff may on a Plaint made to him (without Writ) either

either by Parol or by Precept, command his Bailiff to deliver, *i. e.* make a Replevin of the Beasts, &c. and may take a Plaint out of the County-Court, and make a Replevin presently thereupon (which he ought to enter at the next County-Court) for it would be inconvenient, and against the Scope of the Act, if the Plaintiff should tarry for his Beasts till the Court be held, which is only from Month to Month. *Ibid.* 139.

And for Necessity the Sheriff may take and enter a Plaint before himself, and make Replevin thereon, and after return it into the County-Court, that so the Cattle may not perish. 1 *Keb.* 205. Plaint entered.

And if J. S. be Sheriff, and a Distress is taken by him, the Writ or Plaint shall be in the Common Form, *viz.* which J. S. took, and not which you yourself took. And the Sheriff himself ought to make Deliverance of the Beasts he has distrained. Sheriff Defendant.

If the Beasts are impounded in a Castle or House, the Sheriff may break it and make Replevin, and cannot return he was resisted; for he may take the *Posse Comitatus* in such Cases. *Posse Com' &c.* 2 *Inst.* 105, 194.

So if they are impounded in a Place inclosed, which has a Gate open, and as he comes to make Replevin, the Party stands at the Gate to shoot him, or he is otherwise there opposed, he may break the Close, and enter in any other Place to make the Replevin. See 2 *Roll. Abr.* 565. *b.* 20 *H. 6.* 30.

And for the greater Ease in bringing Replevins, it is provided by Statute 1 & 2 *Ph. & M.* *Mar. c.* 12. §. 8. That the Sheriff shall at the first County-Day, or within two Months after he receives his Patent, depute and proclaim in the Shire-Town, four Deputies not dwelling above twelve Miles from one another, who are to make Replevins and Deliverance of Distresses, in such Manner as the Sheriff himself ought to do. And the Stat. 1 & 2 *Ph. & M.* *Four Deputies.*

Method of
suing a Re-
plevin.

Precept.

Bond.

the Sheriff may hold Plea thereof; and determine the same in the County-Court.

When any Cattle, &c. are distrained for Rent or Damage-feasant, or for any other Cause, the Owner must go to the County-Clerk (or to some one of the Deputies appointed by the Sheriff according to the Statute of *Pb. & Mar.* for the granting of Replevins) to have a Precept in Replevin to retake the Goods or Cattle so distrained. The Form of which Precept, with an Entry of a Plaint in such Replevin, *vide Compleat Sheriff* 78.

When such a Replevin is granted, there ought to be a Bond taken of him to whom it is granted, or of some other for him, with one or more Sureties, that he will prosecute the Replevin. And by Stat. 11 Geo. 2. cap. 19. *for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants*, all Sheriffs, &c. having Authority to grant Replevins, shall in every Replevin of a Distress for Rent take in their own Names from the Plaintiff, and two responsible Persons as Sureties, a Bond in double the Value of the Goods distrained (such Value to be ascertained by the Oath of one, &c. credible Witness, not interested in the Goods or Distress which the Person granting Replevin is to administer) conditioned for prosecuting the Suit with Effect, and without Delay, and for duly returning the Goods and Chattels distrained, in Case a Return shall be awarded before any Deliverance be made of the Distress.

And the Sheriff, &c. taking such Bond, shall, at the Request and Costs of the Avowant, or Person making Conuzance, assign the Bond to the Avowant or Person aforesaid, by indorsing it, and attesting it under Hand and Seal, in Presence of two, &c. Witnesses. This may be done without Stamp, provided the Assignment so indorsed be duly stamp'd before any Action brought thereon; And if the Bond so taken and assigned be forfeited,

feited, the Assignee may bring his Action and recover in his own Name. And the Court where, &c. may, by Rule, give such Relief to the Parties according to Justice. Such Rule to be a Discharge to the Bond.

Form of a Bond in Replevin.

KNOW all Men by these Presents, That we George Adams of Reading in the County of Berks, Gent. and John Browne of the same Town and County, Yeoman, are held and firmly bound to George Mayday, Esq; Sheriff of the County aforesaid, in the Sum of one hundred Pounds of lawful Money of Great Britain, to be paid to the said George Adams, or his certain Attorney, Executors, Administrators or Assigns; for which Payment to be well and truly made we bind ourselves and each of us by himself for the Whole and in Gross, our Heirs, Executors and Administrators, firmly by these Presents. Sealed with our Seals the 13th Day of April 1745. and in the 18th Year of the Reign of our Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c.

Bond and Condition in Replevin.
By Stat. 11 Geo. 2. cap. 19. the Sheriff is to take a Bond both of the Pledges and the Party too, see p. 44.

The Condition of this Obligation is such, That Condition.
if the above-bounden *George Adams* do appear at my next County-Court, to be holden for the County of *Berks* at the Town of *Reading*, on *Monday* the second Day of *July* next, and do prosecute there with Effect his Suit which he hath commenced against *Henry Howe*, for the taking and unjustly detaining of two Oxen, &c. the Goods of him the said *George Adams*, and to make Return of the said Goods, if Return of the same shall be adjudged; that then this present Obligation shall be void and of none Effect.

And the Sheriff in such Cases may issue his Day to appear, &c.
Precept to his Bailiff, to replevy the Cattle immediately,

Effoin.

Nonsuit.

Default.

Declaration.

Alias Replevin.*Pluries* Replevin.*A Toties quoties*.*Recordare*.*Certiorari*.

mediately, and thereupon he is to give a Day unto both Parties until the next County-Court; at which Day the Plaintiff in the Replevin may be effoined, if his Plaint be entered. But if the Plaintiff makes Default, then the Defendant may demand Judgment of the Nonsuit, and have a Return of the Distress: And that the Plaintiff and his Pledges shall be in *Misericordia*.

But the Defendant is not to be effoined at the first Day so given, for if he make Default, the Distress shall be at the same Court awarded to the Plaintiff. But if both Plaintiff and Defendant appear on the first Day, either by Attorney or in Person, then the Plaintiff ought to put in his Declaration, whereto the Defendant is to plead by Avowry or otherwise at the next Court after.

And if the Goods or Cattle, &c. are not taken or delivered upon the first Precept, then the Plaintiff may have an *Alias* Precept in Replevin.

And if they are not taken upon the *Alias* Replevin, nor sufficient Cause shewn why they were not, then the Plaintiff, *viz.* the Owner of the Cattle, may have a *Pluries* Replevin, *vel Causam mihi significat*. which *Pluries* must be *verbatim*, as the *Alias* was, only for *sicut alias*, say *sicut Pluries*. And it is said, That after this may follow a *Toties quoties* Replevin, in the same Manner *mutatis mutandis*. But this I think is seldom used.

Note; the Sheriff may by Parol command his Bailiff to replevy Cattle distrained, and such Precept by Parol is as well as by Warrant in Writing. *Vide* 16 H. 7. 14. F. N. B. 69. E.

Note also, That these Replevins by Plaint may be removed out of the County-Court into B. R. or C. B. by Writ of *Recordare*, either by the Plaintiff or Defendant, but the Defendant must shew the Cause of such Removal in the End of the Writ. *Vide* 2 Inst. 339. See also a Replevin by Plaint removed by *Certiorari* from London. 2 Lilly 557, 558. *Vide post*.

But if the Bailiffs, upon any of the said Replevins issued *ut supra*, return at the next County-Court, that the Cattle are elaigned, &c. or any other Return, whereby it appears they could not deliver the Cattle, &c. for some Default of the Distrainer: The Sheriff ought to make Inquiry ^{Inquiry.} if that Matter be true which is so returned, and if it be found true, then the said Plaintiff may have a Precept in *Withernam*, to take the proper Cattle of the Party distraining, to the Value of those so distrained by him. Which Precept in *Withernam* is in this Form, viz.

Essex. J. S. Esq; High Sheriff of the said County. ^{A Precept in}
 J. S. Esq; High Sheriff of the said County. ^{Withernam.}
 Iy, to all and singular my Bailiffs of the said County, Greeting: Forasmuch as W. B. hath come before me and found me sufficient Security, as well to prosecute his Complaint as to return his Cattle, if Return thereof shall be adjudged; and therefore, by Virtue of my Office, I have often commanded you, and every of you, that you, or some one of you, should cause to be replevin'd and delivered to the aforesaid W. B. his, &c. which J. C. took and unjustly detains, (as it is said) and you upon my several Precepts of Replevin to you directed as aforesaid, have certified that the Cattle, &c. aforesaid are elaigned to Places to you unknown, so that you could not have the View of them: Therefore I now command you, and every of you, that you, or some one of you, take in *Withernam* Chattels to the Value of the said Cattle, &c. of the Chattels of the said J. C. to be delivered to the said W. B. for his Cattle aforesaid, taken and elaigned as aforesaid: And also that you put, by safe Gages and Pledges, the said J. C. so that he be and appear at my next County-Court at D. on such a Day, to answer to the said W. B. of the Plea aforesaid; and you or one of you is to return an Answer to this my Mandate at my said next County-Court. Given under the Seal of my Office, in the
 Tear, &c.

And

And on *Nilil habet* returned, an *Alias Capias* in *Withernam*.

A *Pluries* in *Withernam*.

Et sic toties quoties.

And if the Bailiffs thereon return a *Nilil habet*, &c. *i. e.* That the Party who distrained hath not any Cattle, &c. to be taken in *Withernam*; then the Party whose Cattle are taken shall have an *Alias Capias* in *Withernam*.

And if upon such *Alias Capias* in *Withernam* the Bailiffs also return a *Nilil habet*, the Party distrained may have a *Pluries* in *Withernam* in the same Form, *Mutatis mutandis*, as often as a *Nilil* is returned, *ad infinitum*; but has no other Remedy in the County-Court, for this Court cannot award Process of *Exigent*, &c. as the King's Bench or Common Pleas may, if a *Withernam* be returned there. *Vide F. N. B. 74. D. & 68. G.* Therefore these Proceedings upon the *Withernam* are hardly ever carried on in the Sheriffs Court; for which Reason it is thought proper not to burthen this short Treatise with the Forms: And the Writs from the great Courts at *Westminster* will be framed by the proper Officers there, according to their Course.

If the Sheriff refuses to award a *Withernam*, *ut supra*, or if he makes a Precept to his Bailiff to take the other's Cattle in *Withernam*, and the Bailiff will not execute the Process, and the Party distrained cannot have Cattle delivered in *Withernam* in the County Court for any other Cause; in either of these Cases the Party distrained may have a Special Writ of *Withernam* out of Chancery, directed to the Sheriff, commanding him to make Execution of the first Judgment. The Form of which Writ see in *F. N. B. 74. B.*

Writ of *Withernam*.

Judgment *infra pro Def.*

But if the Party distrained pursues not his Replevin according to the Condition of the Bond given *supra*, or becomes Nonsuit; or if the Right of distraining be found against him (*i. e.* for the Avowant) by Verdict of the Jury, then he that took the Distress shall have Judgment there, to have the Beasts so replevied restored to him again, which is called a *Retorna averiorum*.

And in Execution thereof shall have a Writ from above, called *De Retorno Habendo*, which recites the Judgment.

And if the Cattle are not restored thereupon, then follows a *Sicut alias Retorno Habendo*.

Alias Retorno Habendo.

If the Sheriff returns a *Nihil* upon these Writs of *Retorno Habendo*, the Party who distrained may have the like *Retorno Habendo's* to have the Beasts of the Pledges (which were given on the Replevin) delivered to him, instead of those which were first distrained; and if upon the Writ against the Pledges the Sheriff also return *Nihil*, then may the Party have a *Scire Facias* against the Sheriff, *Quod reddat ei tot averia*, or *tot Catalla* of the Sheriff's own Beasts, &c. *Sed quære de hoc*, for this seems intended of Replevins by Writ, and not by Plaint; and yet it seems reasonable, for that the Sheriff is bound to take sufficient Pledges on the Plaint, as well as on a Replevin by Writ. 2 *Inst.* 340.

Retorno Habendo vers. the Pledges.

Return'd *nihil* and *Sci. Fa.* vers. the Sheriff.

And if on any of the Writs *supra* the Sheriff will not do Execution, or does not duly perform his Office, an Attachment may be issued against him, directed to the Coroners of the County. *Vide Reg. Brev.* 81. Or he may be amerced by the Court, and those Amerciaments returned into the Exchequer.

Attachment against the Sheriff.

Amerciaments.

And the like Law is, if he does not take Pledges, or takes insufficient Pledges.

Now touching Pledges it is to be observed, That in Replevins the Sheriff is to take two Sorts of Pledges, *viz.* One by the Common Law, which are *Plegii de prosequendo*, and the other by the Stat. *Westm.* 2. *cap.* 2. and they are *Plegii de Retorno Habendo*. And if the Sheriff return insufficient Pledges, he shall answer according to the Statute *Westm.* 2. for insufficient Pledges are no Pledges in Law. *Vide Co. Lit.* 145. *b.* 2 *Inst.* 340. and the Stat. 11 *Geo.* 2. above.

Pledges *de Prosequendo* & *de Retorno Habendo*.

And the Pledges must not only be sufficient in Estate, *viz.* capable to answer in Value, but likewise sufficient in Law, *i. e.* under no Inca-

What sufficient Pledges.

capacity thereby. Therefore Infants, Feme Coverts, Persons outlawed, &c. are not to be taken as Pledges.

Not Bodies
Corporate,
nor Pawns,
&c.

Also the Pledges or Security must be by the Bodies of Natural Persons, *ergo*, not of Persons Politick or Bodies Corporate; nor can the Sheriff or his Bailiff take a Pawn or a Sum of Money in Lieu of Pledges. *Vide 1 Jones 378. Cro. Car. 446. Compleat Sheriff 73.*

If the Sheriff or his Bailiff take 100*l.* or any other Thing, in or for a Pledge *De Prosequendo* or *De Retorno Habendo*, this is not good, and an Action lies. *Cro. Car. ib. Sed 2. Salk. 467.*

When given.

And if Pledges *De prosequendo*, &c. are not found, and Judgment is given, the Proceedings are erroneous. *9 Co. Hussey's Case.* But these Pledges may be found either to the Sheriff, or in Court, at any Time before Judgment, but not after. *Vide Compleat Sheriff 75.*

How given at
this Day.

But at this Day the Sheriff, or the Bailiffs in his Name, is to take a Bond both of the Pledges and of the Party too, at the Time when the Replevin is granted, both for prosecuting the Suit, and also to make a Return, &c. according to the Condition 11 *Geo. 2.* above.

The Sheriff's
Remedy a-
gainst them.

And the Remedy which the Sheriff has against the Pledges, is said to be a *Scire Facias*, in which they shall be compelled to plead something in discharge of the Suit, or to tender the Value of the Beasts; but shall not be admitted to say they were not Pledges; for this is contrary to the Return of the Sheriff.

Pro Retorn'
faciendo in
Lond. and a
Retorno Ha-
bendo in B. R.

In a Replevin by Plaint in *London*, the Defendant found Pledges to make a Return, if a Return should be adjudged; and afterwards, and before any Judgment, the Record of the Plaint and Pledges, &c. was returned into *B. R.* by *Certiorari*, and a Return adjudged in *B. R.* and on a *Scire Facias* against the Pledges, they appeared and demurred, and insisted, That the Benefit of Pledges were lost on the Removal by *Certiorari*, which is no Original; *contra*, if by *Recordari*, which

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which is in Nature of an Original, for therein it is said, *prefix the same Day to the Parties, &c.* But it was answer'd, That the Writ of *Certiorari* did certify the Record *cum omnibus ea tangentibus, &c.* and afterwards on great Consideration Judgment was given for the Plaintiff. *Dorrington ver. Edwin, M. 36 Car. 2. B. R. 277. Vide Stat. West. 2. c. 2. 2 Sid. 213. Noy 2. Lilly's Abr. Tit. Repl.*

And note; If the Sheriff deliver the Distress *Nota.* to the Plaintiff in the Replevin without Pledges to return it, if the Taking be adjudged lawful, the Sheriff himself must answer the Price thereof.

But it is also to be observed, That besides these Pledges *De prosequendo, &c.* there are Pledges *pro* other Pledges to be taken by the Sheriff, *viz.* gage Deliverance, *&c.* for if one has sued a verance. Replevin, but has not the Cattle, *&c.* delivered him thereupon, and he that distrained avows, *&c.* then he that so avows upon the Plaintiff's setting forth in his Pleading, That the Cattle are not delivered, and praying Pledges, shall not only avow the the Distress, but gage Deliverance, *i. e.* give in Sureties that he will deliver the Cattle so distrained. *F. N. B. 74. D.*

Yet in some Cases he will not be obliged to Not where gage Deliverance, or give such Security, as where Property he claims Property, or where the Cattle died in claimed, or the Pound, or where the Distress was taken in Cattle dead, Right of the Crown (nor indeed ought a Replevin to be granted by the Sheriff, where it appears to him that the King is Party, or that the Taking was in Right of the Crown) for in these Cases the Sheriff is to surcease. *Vide 13 H. 4. 13. 3 H. 7. pl. 1. 1 Brownl. 33.* or the King Party, *&c.*

And if in the County-Court, *&c.* the Defendant claims Property in the Thing taken; before such Thing can be replevied, that Matter must first be decided before the Sheriff at the Suit of the Plaintiff, by a Writ called *De proprietate probanda*, issued from the Courts above, ere they can proceed in the Replevin below.

Sheriff to surcease.

Property claimed.

*Proprietate
probanda.*

Also if any Thing touching Freehold come in Question, or Antient Demesne be pleaded, &c. they can no further proceed in the County-Court, the Hundred-Court, or Court-Baron. *Co. Lit.* 145, 161. 4 *H.* 6. 30. 2 *H.* 7. 6.

Trial thereon.

And if on the Trial *De proprietate probanda* the Issue is found for the Plaintiff, *i. e.* the Party distrained, then the Sheriff is to make Replevin; but if it be found for him that took it, the Sheriff is to surcease, and must return the Claim of Property upon the Writ, that it may be tried above again, where the Property being again put in Issue, it shall be finally determined. *Co. Lit.* 148.

Who shall
have it.

And note; None but he who is a Party to the Replevin shall have a Writ *De proprietate probanda*. *Ergo*, If on a Replevin the Beasts of a Stranger are delivered to the Plaintiff, such Stranger being no Party to the Replevin, shall not have this Writ. 14 *H.* 4. 25. *Vide* 2 *Roll. Abr.* 431. *F.*

Out of what
Court.

And this Writ *De propr' prob'* is issued out of *B. R.* or *C. B.* if the Suit were depending there, otherwise out of Chancery.

Plaintiff Non-
suit.

*Retorno Ha-
bendo.*

If after Replevin brought, the Plaintiff makes Default, and becomes Nonsuit before Declaration, or if Judgment be given against him on Verdict found, &c. then he that distrained may have a *Retorno Habendo*, without making any Avowry, &c. *Vide* 9 *H.* 6. 4. *b.* 11 *H.* 6. 5. *b.* 14. *b.* But if the Defendant abates the Suit by Plea, he shall not have a *Retorno Habendo* without making Avowry. 9 *H.* 6. 4.

Vide 2 *Roll. Abr.* 433, 434. *M.* In what Cases a *Retorno Habendo* shall be upon an Avowry.

Not return-
able.

And note, *Ib.* 344. *N.* That the Writ *De Retorno Habendo* is not returnable.

Goods, &c.
esloined.

If the Goods or Cattle so taken or distrained are esloined out of the County, or so secreted that the Sheriff cannot find them, and this be found by Inquest accordingly, the Party grieved may have a Writ of *Withernam* directed to the Sheriff,

Writ of *Wi-
thernam.*

Sheriff, for the taking of so much of the Party's own Cattle or Goods to the Value of those esloined. And if they are put in a Castle within his own County, the Sheriff may take the *Posse Com'*, and break into the Castle and make Replevin. Stat. West. 1. c. 17. F. N. B. 73.

Also if in a Replevin the Defendant claims Property, which on a Writ *De propr' prob'* tried in the County-Court, is found for the Plaintiff, and the Sheriff returns it accordingly on the Writ; and also, that the Defendant has esloined the Beasts, &c. in that Case a Writ of *Withernam* shall issue. 30 E. 3. 30. 2 Roll. Abr. 435. 2. In what Cases.

Also if the Goods or Cattle are impounded in a Franchise, the Bailiff thereof by Warrant from the Sheriff, may, or if he do not, or will not, the Sheriff himself must replevy them. And if the Plaint be in a Franchise, and the Sheriff make his Warrant to the Bailiff, who returns that he cannot come at the Goods, &c. the Sheriff may inquire thereof at the next County-Court, and it being found accordingly, may *ex officio* grant his Precept in Nature of a *Withernam*, to take so much of the Defendant's Goods, &c. in Lieu thereof; or the Plaintiff in such Case may have a Writ of *Withernam* out of Chancery. Franchise.

And note; As a Replevin by Writ in the County-Court, &c. may be removed into B. R. or C. B. by *Pone*, which see *ante*. So a Replevin by Plaint in any inferior Court, is to be removed by *Recordare*; yet *vide supra*, a Replevin by Plaint removed by *Certiorari*. Removal. By *Recordare*. By *Certiorari*.

And if the Plea be depending in any of the King's Courts, either at *Westminster* or in the Country, if it be removed either by *Pone* or *Recordare*; though the Defendant must, yet the Plaintiff need not assign the Cause of Removal in the Writ. But if the Plea depends in any Court that is not the King's, as in the Court of the Hundred or Wapentake, &c. or in the Court of any Lord of a Manor, &c. in such Cases the Cause of Removal, either by Plaintiff or Defendant, Cause of Removal shewn.

dant, must be shewn in the Writ. *Vide Reg. Brev. 84. b. 85. b.*

Nonfuit there-
on.

Second Di-
strefs.

Recaption.

Second Deli-
verance,

Trial.

Nonfuit.
*Retorn' irre-
pleg'.*

Avowry.

Defined.

Its Nature,
&c.

Substance.

If the Replevin be removed out of the County- Court or Court-Baron, by *Pone* or *Recordare* into the Common Pleas, &c. and afterwards the Plaintiff in the Replevin, either before or after Avowry made, becomes Nonfuit, the Defendant may again distrain for the same Cause he distrained at first; and the Party distrained shall have no Recaption for Damages for such second Distress; and the Reason is, because there is no Plea depending (on which a Recaption is to be grounded).

Yet in such Case he may sue out a Writ of second Deliverance, which is to revive the first Suit. *F. N. B. 72. Dyer 41.* and issues upon the former Record; and after this Writ had, and Issue and Trial thereon found for the Defendant, or if the Plaintiff be again nonsuited before Declaration, then there shall be a *Returnum irreplegiabile* awarded for the Defendant by the Court above.

Note; A second Deliverance is a *Superfedeas* to the *Retorno Habendo*, but not to the Writ of Inquiry. *Salk. 95.*

And no inferior Court can award a Return irreplevisable.

And upon such *Return' irrepleg'* awarded *ut supra*, the Defendant may make his Avowry, to the Intent to ground a Writ to inquire of the Damages, or he may hold the Beasts, &c. taken upon that Writ, as an irreplevisable Distress, until he be satisfied. *Vide Dyer. 41, 42, 59, 280.*

An Avowry is a Plea or Justification made by the Distrainer, setting forth for what Cause he distrained, and avowing his Right thereto: Yet an Avowry is said to be in Nature of a Declaration, and therefore must contain sufficient Matter, &c. upon which the Avowant may have Judgment to have a Return awarded. If therefore it wants Substance it will be ill, nor will the Plaintiff's Pleadings help it; but if it wants only Form, or omit some Circumstance of Time, Place,

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Place, &c. it may be supplied by the Pleading on the other Side.

But seeing Avowries are proper only in Courts of Record, and seldom or never in Replevins by Plaint, I shall no further speak of them in this Place, but refer the Reader to their proper Title hereafter.

See *Bro. Tit. Plaint No. 23.* A Plaint in Replevin was, *Johannes Capellanus Cantariae bestie M. de D. queritur, &c.* and because not named by his Surname, the Plaint abated. 27 H. 6. 3.

And *ibid. No. 21.* said by *Catesby*, That a Plaint in Replevin shall be before him in full County, and not out of Court, for that the Suitors are the Judges, and are to award the Process thereon, and the Sheriff is only their Minister. But *Pigot Justice contra*; for that if the Cattle were taken presently after the County-Court, and the Sheriff could not thereupon receive the Plaint, and make Replevin, it would be very mischievous to tarry till the next County-Court; and both he and *Brian Chief Justice*, said, It had been always used to make Replevins on Plaint out of Court throughout *England.* 21 E. 4. 66.

But by *Brian*: A Plaint cannot be made in a Court-Baron, *nisi sedente Curia.* *Ibid.*

And by *Pigot*: A *Withernam* cannot be in the County, but in full Court. *Ibid.*

And *Tit. Replevin 28.* The Sheriff at any Place within his County, on Complaint made to him of the Taking of the Beasts, may replevy the same immediately, on Pledges *de prosequendo* & *Ret. habendo* found, and is not to tarry till the next County-Court Day, and the Plaintiff shall be restored presently; and the Sheriff must enter this Plaint, but may do it at home in his Chamber or Hall; for that by *Littleton*, a Man shall not be put to answer to any Thing except it be in Writing, and it would be a Mischief to the Party to tarry for the Replevin till the County-Day. But the Plaint and Proceedings and Day thereof shall be entered at the next County Court.

And by *Littleton*, the Sheriff may thereupon make his Precept to his Bailiff to make Deliverance, &c. either by Parol or in Writing. 9 E. 4. 48.

Bailiff of a Hundred-Court cannot grant Replevins out of Court.

In the Case of *Hallet ver. Burt, Hill. 8 W. 3.* in *B. R.* in Trespass for taking, &c. the Defendant justifies that the Place where was a Hundred, and Time out of Mind had a Court of all Actions, Replevins, &c. grantable in or out of Court, and that a Replevin was granted to him by the Bailiff out of Court, *Virtute cujus*, &c. It was in this Case questioned, Whether a Hundred-Court could prescribe to hold Plea of Replevins, &c. because the County-Court could not hold Plea of them at Common Law, but were enabled by Statute, which extends not to the Hundred-Court? And *per tot Cur'*, Supposing they may grant them in Court, yet clearly they cannot prescribe to grant them out of Court. 2 Salk. Rep. 580.

Recordare.

Touching Removals of Plaints in Replevin by *Recordare*, vide *Fitz. Replev. 17. § ante.*

An Action of Trespass *Quare clausum fregit*, was removed from the County-Court into *C. B.* by *Recordare*, where the Plaintiff counted *ad Dampnum* 39 s. and Defendant demurr'd, for that the Court above had not Jurisdiction of the Cause, the Damages laid being under 40 s. It was urged for the Plaintiff, that he had removed the Cause by *Recordare*, because the Defendant had pleaded *Liberum Tenementum*, and so not triable in the County-Court. And *per Cur'*, It shall be intended that the Action was originally brought in this Court, because the Action is *vi & armis*; and where a Cause is remov'd out of the County-Court, the Declaration below ought to be without *vi & armis*; and that a Declaration *vi & armis* may well be laid in this Court under 40 s. Damages, because the King is to have a Fine and a *Capias* for it. (*Sed quare* since the Statute of *Capiatur Fines*) *Hill. 1 W. & M. Lambert and Thurston. Vide 3 Mod. Rep. 275. Carth. 108. and 1 Sid. 213.*

C H A P. III.

S E C T. I. Of Replevins, &c.

Hitherto I have treated of Replevins by Writ, and also by Plaint in general, and shall now proceed more particularly to shew,

1. Who may have a Replevin.
2. Against whom.
3. Of what Things.
4. In what Courts.
5. The Process, Pleas and Proceedings.
6. The Judgments therein.
7. Of Costs and Damages thereupon.

I. *Who may have a Replevin.*

It is a general Rule, That he who has not Property in the Thing distrained, shall not have a Replevin. 9 E. 3. 340. 6 H. 4. 2. 7 H. 4. 18. 11 H. 4. 17. 2 H. 6. 14. 20 H. 6. 18. 35 H. 6. 22. 39 H. 6. 35, &c.

Therefore a Lord for a Heriot, a Parson for a Proprietor. Mortuary, shall not have it before Seisfure, for the Seisfure vests the Property in such Cases, and Seisor. then they may have a Replevin. 10 H. 4. 1. 16 H. 7. 5. *per Brian. Plowd.* 281.

And he that has not Property, either general, special or qualified, shall not have it; but he that has Cattle by Way of Agistment, may have a Replevin, because he has a special Property. Agistor. 3 E. 3. 71. 42 E. 3. 18. 21 E. 3. 54. *Co. Lit.* 245. 2 *Roll. Abr.* 430. C.

So may he that has Cattle to manure or com- Manuror. pester his Lands. *Ibid.* 11 H. 4. 17, 29. 2 E. 3. 34, 44.

So may one that has Goods bailed to him, Bailee. 21 H. 7. 14.

So

Lord.

So the Lord of a Villein, for his Villein's Cattle taken. 42 E. 3. 18. 9 H. 6. 26. F. N. B. 69. 7.

But the Lord in that Case should not recover Damages for the Taking, but only for the Distraining. F. N. B. *ib.*

Successor.

So the Successor of an Abbot, &c. for a Taking in Time of the Predecessor. 9 H. 6. 25.

Executor.
Administrator.

Also an Executor or Administrator shall have it *De bonis Testatoris*. Reg. Brev. 81. 5 E. 3. 13, 33. Fitz. Repleg. 24.

And an Executor for Goods taken in the Testator's Life. 6 H. 7. 8. 21 H. 6. 1 Fitz. Executors 106. Avowry 257.

And when brought of his own Possession, he may have it before Probate. Plow. 281. Vide Lut. 168. 1 Jo. 174. 2 Sid. 82. 1 Leon. 205.

Landlords.

If one takes and impounds the Beasts of my Tenant, and I take them out of the Pound, and put in my own Beasts and gage for them, I may maintain a Replevin for my own Beasts. 7 H. 4. 18.

And in that Case the other shall not avoid it by saying, He took the Beasts of my Tenant. 2 Roll. Abr. 430. D.

Joinder in
Replevin.

Husband and Wife shall join in a Replevin for a Distress taken on the Wife's Lands. Fitz. Repleg. 42.

Baron and
Feme.

But for Goods of the Wife taken when Sole, the Husband alone shall have it. *Ibid.* 43. F. N. B. 69. 1 Keb. 671.

A Replevin brought by Baron and Feme was abated, and a Return irreplevisable awarded, for that a Feme cannot have Property in Goods, &c. with her Husband. Vide Tit. Return de avers 31. Bro. Replev. 86.

Jointenants,
&c.

If the Beasts of divers several Men are taken, they cannot join in a Replevin, but each one must have it severally. Co. Lit. 145, 146.

Yet Jointenants, or Tenants in Common, shall join in Replevin. 11 H. 6. 31.

But

But if two others join, the Writ shall abate.

Ibid. 3 H. 4. 16. 21 E. 4. 23.

See a Replevin brought by the Heir of the Heir. Feme, as Heir of Baron and Feme. 1 Keb. 392.

An Infant may bring Replevin. *Vide* 1 Show. Infant. 169, 170.

If the Lord distrain the Tenant, the Mesne Mesne. may discharge the Tenant, and put his own Cattle in the Pound in Lieu of the Tenant's, and thereupon bring a Replevin. 13 E. 4. 6. 34 H. 6. 47.

So note; A Replevin may be brought by a Person whose Cattle were not, and of such Cattle which were never taken or distrain'd. *Vide* Bro. Replev. 42, 54.

See Bro. Riots 2. That the Sheriff or his Bailiff may make Replevin, by assembling three hundred or more Persons.

SECT. II. Against whom.

A Replevin lies not against the King, nor where Not the King, he is Party, nor where the Taking was in nor Bailor, his Right. 3 H. 7. 1.

It lies not against him that hath Goods delivered to keep. *Lib. Intr.* 569. B.

But it lies against the Lord that distrains but Lord. wrongfully, though the Goods come again to the Owner. *F. N. B.* 69. H.

And against any other that takes or distrains Goods or Cattle wrongfully.

So it lies against the Sheriff, and the Writ in Sheriff. that Case shall be in the common Form. *Vide ante.*

If A. takes Beasts by Command of B. it may Election of be brought against both. 2 Roll. Abr. 431. E. Persons.

Or else it may be against the Commander only, as well as Trespass. *Ibid.*

So if a Distress be in one County, and im- Places. pounded in another, Replevin lies in either. *F. N. B.* 69. J.

And

Actions.

And if a Trespasser takes Beasts, either Trespass or Replevin lies against him. 2 *Roll. Abr.* 430. *D.* 2.

Heir.
Baron and
Feme.

It may be against the Heir of a Feme, though charged therein as Heir of Baron and Feme. 1 *Keb.* 392.

See a Replevin against the Husband, and an Avowry by Baron and Feme. 2 *Keb.* 712.

Against the Bailiff of Baron and Feme, he must aver her Loss in his Avowry. 3 *Keb.* 151.

It lies not against the Bailiff (or other) for Goods taken on a second Distress. 1 *Keb.* 113.

A Replevin is triable by either Plaintiff or Defendant without Proviso. 2 *Keb.* 752.

SECT. III. Of what Things.

Property.

IT lies of such Things wherein a Man has any Kind of Property, *viz.*

General.
Qualified.

Of Things wherein a Man has only a qualified and no absolute Property.

Fere Naturæ.

As of Things *Fere Naturæ* if made tame, for the Property only continues while they continue tame. 2 *Roll. Abr.* 430.

Hawk, Ferret, &c.

Therefore it lies of a Hawk reclaimed, *ib.* or of a Ferret. 2 *E. 2. F. Avowry* 182.

So of a Mastiff or Greyhound, *ib.* and *Distress* 22.

So of a Hive of Bees. *Reg. Brev.* 81. *F. N. B.* 68. *B.*

Special.

So of Things whereof one has only a special Property or Possession.

As where Goods are pledged or bailed to one to keep. 21 *H.* 7. 14.

Live Cattle.

Or where Cattle are taken that agist or manure or compester Land. *Co. Lit.* 145. *b.*

So where a Heriot or Mortuary is distrained after Seizure. *Vide supra.*

With their
Young.

If one distrain Sheep which afterwards have Lambs, it lies of both. 18 *E.* 3. 48. *F. N. B.* 69. *D.*

So

So of a Cow and Calf not calved, or a Sow and Pigs not farrowed when taken. *Ibid.* 12 E. 3. 45.

Also it lies of any Goods or Chattels, as well as of live Cattle. *Reg. Brev.* 81, 82, &c. 4 Co. 54. Goods and Chattels.

Therefore it lies of any Household Goods or Implements of Trade, &c.

It lies of a Barge. *Dyer* 117. So of Yarn or Wooll, &c. *M.* 39, 40 *El. C. B.*

So of Corn or Grain in a Waggon or Cart. *Corn, &c. Lib. Intr.* 160, 162.

And by Stat. 2 W. & M. Sess. 1. c. 5. any Sheaves or Cocks of Corn, &c. The like of Corn growing, &c. by an equitable Construction upon the Stat. 11 Geo. 2. cap. 29. which hath not yet been brought into Judgment, *ideo Quere. Vide antea of Distresses.* Stat. 2 W. & M.

So it lies of Wood cut, or Trees felled, being thereby severed from the Land. *Reg. Brev.* 86. Woods, Trees, &c.

And generally whatever is distrained may be replevied. *Vide antea of Distresses.*

But it lies not of Deeds or Charters concerning Lands (except in a Box). 1 *Brownl.* 186.

Nor of Trees or Wood growing, nor of any Thing annexed to the Freehold, because such Things cannot be distrained.

Nor of Goods taken beyond Sea, though after brought into *England.* 1 *Show.* 91. Goods taken beyond Sea.

But where Goods are taken in one County, and carried into another, it lies in either.

If one by Deed grant a Rent with Clause of Distress, and that he shall keep the Goods distrained, against all Gages and Pledges, until the Rent be paid; yet the Sheriff may replevy the Goods distrained, for it is against the Nature of a Distress to be irrepleviable, and by such an Invention the Current of Replevins would be overthrown, to the Prejudice of the Commonwealth. *Co. Lit.* 145. b.

S E C T. IV. *In what Courts.*

- B. R. & C. B.** **I**T lies either in the King's Bench or Common Pleas by Writ. *Dyer* 246.
- Cinque Ports.** It lies also in the Cinque Ports by Writ. *Reg. Brev.* 79. *F. N. B.* 67. *A.*
- County-Court.** And in the County-Court by Plaint, *per Stat. Marl. c. 21.*
And there it may be before the Court-Day. *Vide ante.*
- Court-Baron.** So in a Court-Baron by Plaint, but there it ought to be granted *sedente Curia.* 21 *E. 4.* 66.
Yet by Custom, it seems in a Court-Baron it may be made before the Court-Day.
- Hundred-Court.** And by Custom, a Hundred-Court may hold Plea of Replevins by Plaint. 2 *Inst.* 139.
But the Bailiff of a Hundred cannot grant Replevins out of Court. 2 *Salk.* 580.
And 'tis there queried, If a Hundred-Court can prescribe to hold a Plea of Replevins? For the County-Court itself could not do it at Common Law, and the Statute which enables the County-Court, does not extend to Hundred-Courts: And *per Cur.* Supposing they may grant them in Court, yet they cannot prescribe to grant them out of Court. *Ibid.*
- Northamptonshire.** But Note; The Usage of Northamptonshire, that in the Absence of the Sheriff's Bailiff, &c. the Frank-pledge may make Deliverance by Replevin. 2 *Inst.* 139.
- Frank-pledge.** Replevin lies by Plaint in London. 2 *Lilly's Abr.* 557. *L.*
- Marshalsea, neg.** A Replevin lies not in the Marshalsea. 10 *Co.* 74, 75.
- Canterbury.** See a *Procedendo* in Replevin to the Court of Canterbury denied, though no other Remedy could be had for the Rent-charge avowed for. 2 *Keb.* 573. *pl.* 90.
- Hallifax.** *Quere* of the Court at Halifax. 3 *Keb.* 550.

And that Process on the Stat. 17 Car. 2. cap. 7. is void in inferior Courts. *Ibid.* Inferior Courts.

SECT. V. Of Process, Pleas and Proceedings.

THE Process in Replevin is an *Alias* and *Process.*
Pluries Replevin. *Vide ante.* *F. N. B.* 68.
F. G.

And if these are not returned, an Attachment to the Coroners against the Sheriff. *Reg. Brev.* 81. a. *Alias, Pluries, &c.*

Upon a Return that the Bailiff of a Franchise *nullum dedit Responsum*, or that he will not make *Deliverance*, there shall be a *Non omittas* to the Sheriff. *F. N. B.* 68. *F.* *Non omittas.*

Or if the Bailiff of a Liberty refuses to replevy, the Sheriff may do it without a *Non omittas*, *per Stat. Marlbr.*

See also *ante*, upon what Returns of the Sheriff a *Withernam* shall be awarded. *Withernam.*

And that thereupon may issue three *Capias*'s and an *Exigent*. *Vide* 5 *E.* 4. 18.

Note; A *Withernam* is no Writ of Execution, but only a Mesne Process. *Vide Reg. Brev.* 79. *Raym.* 475. *Salk.* 582. *Nota.*

Yet the Writ therein may in some Cases be either General or Special, as 2 *Roll. Abr.* 431. *E.* *Writ, Count, &c.*

If I have Beasts of another to manure my Land, and a Stranger takes them, I may have a general Writ without shewing the Speciality of the Case. 42 *E.* 3. 18. 11 *H.* 4. 17, 23.

Or I may have a special Writ, setting forth the special Matter. 11 *H.* 4. 17.

The Writ in the *Detinet*, and Count in the *Variance.*
Detinuit, a material *Variance.* *Lut.* 1150.

For on Replevin in the *Detinet*, the Plaintiff recovers both the Value of the Goods and Damages for the Taking; but when the Writ and Count are in the *Detinuit*, 'tis implied the Plaintiff has his Goods again, and therefore shall re- *Detinet.*
Detinuit.

cover

cover Damages only for the Taking. *Lut.* 1151.
Vide F. N. B. 69. *Co. Ent.* 610.

So where the Writ is *De averiis*, and the Count *De averiis & catallis*, 'tis ill. 3 *Keb.* 671.

Neither the Writ or Declaration need to mention the Colour or Value of the Cattle. 1 *Co.* 45.

Certainty.

But the Nature, Kinds and Number ought to be mentioned. *Ibid.*

Yet see 1 *Leon.* 43. where the Plaintiff may vary from the Number distrained.

Time.

Also the Declaration ought to shew the Time and Place of Taking. 2 *H.* 6. 14. *Hob.* 16.

Vide Cro. El.
 896.

And if you do not name the Place where, as well as the Vill, 'tis ill. *Ibid.* *Vide ante.* 1 *Sid.* 120.

Place.

For the taking at another Time or Place than declared abates it. *Cro. El.* 896. 35 *H.* 6. 40.

And 'tis a good Plea for the Defendant to say he took them in another Vill or Place. 2 *H.* 6. 14. 16 *H.* 7. 5, 6.

Yet *Misnomer* of the Vill or Place is no Plea in Replevin. *Ibid.*

Avowry.

But though the Declaration assign no Place, yet the Defendant in his Avowry must, else he can have no Return. *Hob.* 16. *Quere.* 1 *Sid.* 10, 20. 1 *Leon.* 193.

A Declaration in Replevin was brought by Bill, and held naught on a Demurrer, because no second Deliverance can go in such a Case, if the Plaintiff be nonsuited. 2 *Lilly* 557. *H.* *Vide ante.*

Ill Count and
 Avowry.

If the Count in Replevin is ill, and also the Avowry, the Plaintiff shall have no Return. 1 *Shew.* 99. *Sed vide ante.*

Uncertainty in the Count or Avowry may be reduced to a Certainty by the Sheriff's Inquiry on the *Retorno Habendo.* 1 *Leon.* 193.

Misnomer.

The Defendant shall not plead *Misnomer* of the Place, but may say he took it in another Place. 16 *H.* 7. 5, 7. 2 *H.* 6. 14.

*Prisel in auter
 lieu.*

Where he pleads *Prisel in auter lieu*, he must make Suggestion for a Return. *Salk.* 94.

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Non cul infra sex annos, no Plea therein. Non Cul.
1 Sid. 82. 1 Keb. 279.

Tender of Amends after taking, and before Tender, &c.
Delivery of the Cattle, is ill. 3 Keb. 190.

Note; The Plaintiff in Replevin cannot dis-
continue without Leave of the Court. 1 Leon.
105.

Form of a Declaration in Replevin.

Berks, ff. **A**DAM Browne was summoned to
answer Charles Daniel of a Plea
wherefore he took the Cattle of the said Charles,
and hath unjustly detained them against Gages
and Pledges, &c. And whereupon the said
Charles by R. S. his Attorney complains, that
the aforesaid Adam the first Day of May in the
eighteenth Year of the Reign of the Lord George
the Second, now King of Great Britain, &c. at
Twysford in the County aforesaid, in a certain
Place there called Spring Close, took the Cattle
of the said Charles, to wit, Two Oxen and three
Cows, and hath unjustly detained them against
Gages and Pledges until, &c. Wherefore the a-
foresaid Charles saith that he is injured, and
hath Damage to the Value of twenty Pounds,
and thereon he brings this Suit, &c.

Of Pleas in Replevin.

PLEAS in Replevin are generally of four Kinds, Four Kinds of
viz. either, 1. Pleas in Bar, or 2. In Justi- Pleas.
fication, or 3. By way of Conuzance, or 4. By
way of Avowry.

Claim of Property may be pleaded either in 1. In Bar,
Bar or Abatement. Salk. 94.

Property is a good Plea in Bar, and not the
General Issue. 31 H. 6. 12. 16 H. 8. 6. 3 Keb.
219.

F

And

And where the Defendant pleads Property, he need not make a Suggestion *pro Retorno Habendo*. *Salk.* 94.

Yet 'tis said, Claim of Property cannot be pleaded by way of Avowry. 31 *H.* 6. 12.

'Tis no Bar to say, The Plaintiff is possessed of the Cattle. *F. N. B.* 69. *H.*

But *Non cepit* is a good Plea in Bar. *Fitz. Aude* 28. *Lib. Intr.* 561, 565.

Bar by *Non cepit*, and what is good Evidence therein, 1 *Leon.* 42. and see there Property in a Stranger pleaded in Bar.

Where one Defendant pleads *Non cepit*, yet the others may make Conuzance or justify in his Right. 1 *Roll. Abr.* 320. *R.*

In Replevin of Corn, held a good Bar to say, it was his Wife's, and that the Plaintiff surrendered it to her. 2. 30 *E.* 3. 9. *pl.* 3.

2. In Justification.

When one cannot have the Thing for which he distrains, he may justify, but cannot avow. 19 *H.* 6. 41. *per Cur.* *Sed vide* 22 *E.* 4. 36. *b. contra per Callow.*

If one distrain for Services, and the Tenant die, in Replevin by the Executors, he shall justify but not avow. *Fitz. Executors* 106.

For in that Case he cannot have a Return for the same Thing. 22 *E.* 4. 36. *b.*

If one distrain for Services, he may justify or avow at his Election. 15 *E.* 4. 29.

For in every Case where one may avow, he may justify, *Sed non econtra.* 5 *E.* 4. 6.

One may justify for Rent determined, but cannot avow. *M.* 33, 34 *El. C. B. Goddard's Case.*

Tenant at Sufferance may justify a Distress for Damage-feasant. 4 *H.* 7. 3.

3. Conuzance.

A Plea of Conuzance, is properly a Confession or Acknowledgment of taking the Distress, as Bailiff or Servant to another.

See Conuzance pleaded as Bailiff or Servant for Damage-feasant in the Freehold of his Lord or Master. *Dyer* 280, 365.

So for Damage-feasant in Land which his Master had for Years. *Dyer* 117.

Conuzance as Bailiff to the Parson of *D.* who claimed a Rent by Prescription, and a Distress held good. *Lib. Intr.* 557. *Charge* 1.

How a Defendant in Replevin may justify or make Conuzance as Bailiff, *vide Salk.* 107. and *Lut. Tit. Replevin.*

There are in general four Kinds of Pleas by 4. Avowries. Avowry, which see in 9 *Co.* 134, 135, &c.

But more particular see the Head of *Avowries*, *postea.*

And Note, by the Stat. 4 & 5 *Annie*, " Any " Tenant or Defendant in any Suit, or any Plaintiff in Replevin in any Court of Record, may " with Leave of the same Court, plead as many " several Matters thereto as he shall think necessary for his Defence.

If the Defendant in Replevin claim Property in himself, he shall have Return without Conuzance, because his Plea destroys the Plaintiff's Title: And if he lays Property in a Stranger, and make no Conuzance, and if the Plaintiff admits that Property, there shall be a Return without any Conuzance; for by that Admittance the Plaintiff's Property is destroyed: But in all Pleas that do not shew the Property out of the Plaintiff, a Conuzance must be made, and the Plea only is to be answered, and not the Conuzance.

An Avowry in Replevin.

AND the said Thomas Williams and William Thomas, by R. South their Attorney, come and defend the Force and Injury when, &c. and the same Thomas Williams well avows, and the said William Thomas well acknowledges, as Bailiff of him the said Thomas Williams, the taking of the Cattle aforesaid in the said Place where, &c. and justly, &c. because they say that the same Place where the taking of the Cattle

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aforsaid is supposed to be, and at the said Time when, &c. did contain in itself two Acres of Arable Land, called the Short Butts, in the said Field called B. F. in S. aforsaid; which said two Acres of Arable Land, with the Appurtenances, are and at the said Time when, &c. were the Soil and Freehold of him the said Thomas Williams; and because the Cattle aforsaid at the said Time when, &c. were in the said two Acres of Arable Land, with their Appurtenances, eating up the Grass then in the same growing, and doing Damage there, the same Thomas Williams well avows, and the said William, as Bailiff of him the said Thomas Williams, well acknowledges the taking of the Cattle aforsaid in the said Place where, &c. so doing Damage there, &c. and this they are ready to verify: Wherefore they pray Judgment and a Return of the Cattle aforsaid, together with their Damages, Costs and Expences by them about their Suit in this Behalf sustained, according to the Form of the Statute in such Case lately made and provided, to be adjudged to them, &c.

S E C T. VI. *The Judgments therein.*

IT is to be observed, That the usual Judgments in Replevin are either, 1. *Retorno Habendo's*, 2. *Second Deliverance*, or 3. *Returns irreplevisable*.

1. *Retorno Habendo.*

A *Retorno Habendo* is a judicial Writ that lies for him who has avowed a Distress, and proved the same to be lawfully taken; or where (upon Removal of the Plaintiff into the Courts above) the Plaintiff, whose Cattle were repleved, makes Default, or does not declare or prosecute

secute his Action, and thereby becomes Nonsuit, &c. And by this Writ the Sheriff is commanded to make a Return of the Cattle, to the Defendant in the Replevin, *i. e.* he that first distrain'd them.

The Defendant said, The Place was Antient Antient Demefne, though the Issue be found for him, he mesne. shall not have Judgment to have a Return.

21 E. 3. 7.

If one make Conuzance as Bailiff, he may Conuzance. have Judgment to have Return. *Co. Ent.* 59.

If the Plaintiff be Nonsuit, the Defendant Nonsuit. shall have Judgment for a Return. 35 H. 6. 47.

22 H. 7. 52.

And this, although the Defendant do make Avowry. no Avowry. 2 H. 5. 6. *Fitz. Retorn. aver.* 1. *Dyer* 280.

And so it seems he may if the Writ is abated. Writ abated. 9 H. 6. 4. 11 H. 6. 5. 35 H. 6. 40.

But if the Count abate or no, when of the Count abated Place or Taking, yet he shall not have Judgment for a Return without an Avowry. 35 H. 6. 40. *Bro. Second Deliverance* 15.

So if one justifies for Services, and make no Justifies. Avowry, he shall not have a Return although it be found for him. 15 E. 4. 29. 5 E. 4. 6. *F. Avowry* 47.

Replevin against C. and D. C. pleads he took them not, D. justifies in Right of C. though it be found for him he shall not have a Return. 22 H. 6. 52.

In Second Deliverance he shall not have Return without Avowry. *Fitz. Retorn. averior.* 1. *Second Deliverance.* 2 H. 4. 23.

On Removal of a Plaintiff abated for Default Plaintiff re- of the Surname, and a Return was awarded moved. without an Avowry. 7 H. 6. 3.

One avows for Rent payable at two Days, one whereof is not come, the Plaintiff is nonsuited: There shall be a Return awarded for the one Day come. 39 H. 6. 35.

2. Of Second Deliverance.

A Second Deliverance is a Writ judicial, issuing upon the former Record, *per Stat. West. 2. c. 2.* directed to the Sheriff, and lies after a Nonsuit of the Plaintiff, or a *Retorno Habendo* awarded *ut supra* for him that distrained; for thereupon the Plaintiff in the Replevin may have this Writ, commanding the Sheriff to replevy the same Cattle again, upon Security given for a Re-delivery of them, in Case the Distress be justified.

Not at Common Law.

At Common Law one might have been nonsuited in Replevin, and yet have had new Replevins *ad infinitum*. 34 H. 6. 37. 10 H. 7. 29. 19 H. 8. 12.

And at this Day, if the Writ abate by Plea, or Confession, there may be another Replevin. 34 H. 6. 37.

But by Stat. West. 2. Plaintiff nonsuit.

But by *West. 2. c. 2.* if one be nonsuited in Replevin, he shall have but a Second Deliverance awarded upon the Rolls of the former Judgment. 21 E. 4. 6. 2 H. 4. 23. *Dyer* 41.

Judgment against him.

Yet if Judgment be given against the Plaintiff in Replevin, either upon a Demurrer or Verdict, there shall be no Second Deliverance. 2 H. 4. 23.

Out of what Court.

And no Second Deliverance shall be but in the same Court where the Judgment was. *Plowd.* 206. b.

County-Court.

Yet if he be nonsuited in the County-Court, and it be afterwards removed into C. B. the Second Deliverance may issue out of C. B. *Fitz. Refleg.* 37.

Nonsuit.

And if he be nonsuited in the Second Deliverance, he shall not have another Writ, *Fitz. Retorn. aver.* 6. because (as it seems) it is a judicial Writ.

After Narr'.

And if one be nonsuited in Replevin after Declaration, the Second Deliverance ought to agree

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agree with the Count in the Replevin, in the Agreement. Day, Place and Number of Cattle. 3 H. 6. 9.

21 H. 7. 28. Vide 12 H. 7. 4. 49 E. 3. 29.

Yet some Books say, it may vary from the Variance. Place. 26 H. 6. Pl. 7. Fitz. Repleg. 22. Ayde 131.

And some say it may vary from the Day or Number of Cattle. Vide 26 H. 8. 6. Pl. 27.

A Replevin was of a Heifer, and a Second Deliverance of a Cow, yet held good. Ibid.

And so if the Replevin were of a Calf, for it may perhaps be a Heifer or a Cow at the Time of the Second Deliverance.

Upon Nonsuit in Replevin a Return was awarded, and thereupon a *Withernam* and other Cattle taken, yet the Second Deliverance shall be of the former Cattle. 2 E. 3. 17. Fitz. Avowry 171. 22 H. 7. 92. Pl. 7. Dyer 59.

Yet (*alii contra*) that there should be no Second Deliverance, because the Plaintiff had estrayed (or esloined) them. 22 H. 7. 92. Pl. 7.

The Husband had Aid of the Wife, and then made Default, the Wife cannot join in the Second Deliverance. Fitz. Repleg. 23.

The first Cattle.

Baron and Feme.

3. Returns irreplevisable.

A *Returnum irreplegiabile* is a judicial Writ directed to the Sheriff, for the final Restitution or Return of Cattle, as unjustly taken by another; and so found by Verdict, or after a Nonsuit in a Second Deliverance, *ut supra*.

At Common Law a Return *irreplevisable* was, either when it was found against the Plaintiff by an Issue joined. 36 H. 6. 8. Pl. 24.

At Common Law.
On Issue.

Or if the Defendant did not answer to the Avowry, there the Cattle were to be *irreplevisable*. Lib. Intr. 571. a. Sect. 4.

But by Stat. West. 2. c. 2. a Return *irreplevisable* is to be upon a Nonsuit, viz. in Second Deliverance only. 2 H. 4. 23. Pl. 9.

By Stat. West. 2.
On Nonsuits.

After Verdict. Upon a Nonsuit in Replevin, it shall not be except the Nonsuit be after a Verdict. 14 H. 7. 6. Pl. 14. Vide 24 E. 3. 33.

Or second Deliverance. If the Plaintiff is Nonsuit in Replevin, and after in a Second Deliverance, there shall be a Return irreplevisable before Avowry. Dyer 280.

Jury return. If the Plaintiff be Nonsuit when the Jury come again and give their Verdict, yet there shall not be a *Return' irrepleg'*. 34 H. 6. 5. 14 H. 7. 6.

Default. If the Plaintiff in Replevin makes Default at the *Nisi prius*, there shall be no *Return' irrepleg'*, because it is out of the Stat. 3 H. 6. cap. 8.

King's Demise. The Plaintiff in Replevin was nonsuited, and a *Retorno Habendo* awarded; the King demises; the Pledges, being summoned, appear not, *Qu.* If there should be a Return irreplevisable. 1 E. 3. Pl. 17. 1 H. 7. Pl. 17.

Quere, If it may be after a Return awarded in Second Deliverance. 2 H. 4. 23.

Demurrer. Or upon a Judgment against the Plaintiff upon a Demurrer. 2 H. 4. 23. 14 H. 7. 6. Dyer 118.

Plea to the Writ, &c. But where there is a Demurrer upon a Plea to the Writ, and Judgment for the Defendant, there shall be no Return irreplevisable. 34 H. 6. 37. *Bro. Repleg.* 6.

Quere, 2 H. 4. 23. If it shall upon an Issue tried on such a Plea to the Writ.

The Defendant in Replevin pleads to the Writ, which was found accordingly by the Jury, and adjudged there should be a Return irreplevisable. 34 H. 6. 37. *Br. Repl.* 6.

But *aliter* upon a Demurrer on a Plea to the Writ or Confession, &c. *Ibid.*

Discontinuance. If the Plaintiff upon a Second Deliverance suffer the Plea to be discontinued, there shall be a Return irreplevisable.

S E C T. VII. *Of Costs and Damages in Replevins.*

IT is to be observed, That at Common Law before the Stat. 7 H. 8. c. 4. the Avowant was to defend his Right at his own Expence, and was not allowed any Costs or Damages, though he distrained for a very just Cause. 35 H. 6. Pl. 12.

For which Reason many Persons would replevy their Goods so distrained, and prosecute the same merely for Vexation.

To remedy which Mischief in Part, that Stat. 7 H. 8. tute was made which enacts, "That where c. 4.

"common Recoveries are suffered of Manors,
"Lands, Tenements and Advowsons, the Recoverers, their Heirs and Assigns, may distrain
"for any Rents, Services or Customs due and
"unpaid; and make Avowry and justify the
"same, and have like Remedy thereon, as the
"Recoverers might have had though such Recoverers were never seised thereof, &c.

Costs and Damages for the Defendant.

Vide 2 Roll.

Abr. 412.

"And therein every Avowant or Bailiff, in
"any *Replegiari* or Second Deliverance, if their
"Avowry, Conuzance or Justification be found
"for them, or the Plaintiff be otherwise barr'd,
"shall recover his Damages and Costs." Vide
19 H. 8. 11. Plowd. 82. Dyer 141.

But because that Act extended to Persons only which held Lands, &c. by Rent-services or Customs, where such Recoveries were suffered *ut supra*; therefore by Stat. 21 H. 8. c. 19. it Stat. 21 H. 8. is enacted, "That in any *Replegiari* or Second c. 19.

"Deliverance for any Rents, Customs or Services, or for Damage-feasant, if the Avowry,
"Conunance or Justification be found for the
"Defendant, or the Plaintiff be nonsuit or otherwise barred, the Defendant shall recover
"such Costs and Damages as the Plaintiff should
"have

" have had he recovered. So that this Statute
 " extended to Avowries, &c. for any Rents, &c.
 " whatsoever. *Dyer* 118, 141.

Vide Pasch. 34 Eliz. B. R. Rot. 291. adjudg'd
 that this Statute did not extend to an *Estray*.

Stat. 4 Jac. 1.
 c. 3.

But that Statute extending only to Avowries,
 &c. for Rents, &c. and there being many other
 Actions within the same Mischief, in 4 Jac. 1.
 another Act was made, " in which that of
 " 21 H. 8. c. 15. which gives Costs to the De-
 " fendant in Debt, Trespass on the Case, De-
 " tinue and Account, or any other Actions what-
 " soever, wherein the Plaintiff or Defendant
 " might have Costs."

Costs and not
 Damages for
 the Defen-
 dant.

By Reason of which last general Words, it
 was adjudged in the Case of *Samuel and Hoder*,
 2 Cro. 520. That the Defendant in Replevin,
 where he justified the Taking for an Amercia-
 ment in a Court-Leet, should have his Costs,
 (not Damages) though such Justification is nei-
 ther for Rents, Services or Customs, nor for any
 other Particulars for which Costs were given
 by any of the said Statutes of H. 8. and are only
 implied in the general Words of that of Jac. 1.
 which includes not only such Actions wherein
 Costs are given by particular Statutes, but all
 other Actions whatsoever.

Yet note; In that very Case in 2 Cro. 520. are
 two other Cases cited to have been so adjudged
 on the like Point, viz. *Pasch. 38 El. 44 & 45*
Eliz. which being before the said Stat. 4 Jac. 1.
 could not be influenced thereby. See also
 1 Brownl. 173. The Plaintiff in Replevin on
 Avowry for Rent, had his Costs; and Second
 Book of Judgments, fol. 240. on Property plead-
 ed, Damages and Costs.

And *Dyer* 280. *Quere* on Nonsuit in Reple-
 vin, and after in Second Deliverance, if the De-
 fendant shall have Damages before Avowry
 made? Which admits he may after. And there
 is no Question but at this Day Damages are to
 be given to the Defendant in Replevin, where-
 ever

ever the Plaintiff is nonsuited, or Issue found against him, or he be otherwise barr'd on Cognizance, Avowry or Justification, either for Rents, Customs or Services, and that even by the said Stat. 7 H. 8. c. 4. *vide Plowd.* 82. *Dyer* 141. 19 H. 8. 11.

And for Damage-feasant by the said Stat. 21 H. 8. c. 19. *vide Dyer* 118, 141.

See also the Case of *Winnard and Foster, &c.* Costs for both Plaintiff and Defendant. in 2 *Lutw.* 1190. Replevin for taking a Cow and a Stack of Hay, one of the Defendants made Cognizance as Bailiff of the Sheriff, and the other as his Servant, for that one N. D. was possess'd of those Goods, against whom a Plaint was levied in the County-Court, and he not appearing upon Summons, an Attachment issued against his Goods, and so justifies the Taking. The Plaintiff replies he was possessed of those Goods, and traverses the Possession of N. D. and on Issue the Jury found for them as to the Cow, and Damages and Costs 40 s. and as to the Hay for the Plaintiff, and the like Damages and Costs.

In Avowries where Part is found *pro Quer* and Part *pro Def*, it has been a Query whether the Jury can give Damage and Costs to the Plaintiff; for that the Avowant being in Nature of a Plaintiff, where some Part of the Issue is found for him, it shews he had a Right to take some of the Goods, though not all; *Ergo* the Plaintiff in Replevin is not to have Damages or Costs.

But the Case in *Lutw. supra*, and that of 2 *Roll. Rep.* *Denton and Parsons* reported in several Books, 37. seem contrary, *viz.* In Replevin the Defendant *Cro. Jac.* 473. avowed for 36 l. Rent; the Plaintiff as to 12 l. pleads Payment, and to the other 24 l. an Agreement and Satisfaction; Part whereof, *viz.* Payment of the 12 l. was found for the Plaintiff, and for that the Jury gave Damages and Costs, and Part found for the Avowant, *viz.* That there

there was no such Agreement, and also Damages and Costs; *sed vide Cro. Jac. 413. aliter.*

And 1 *Brownl.* 173. is, That in such Case the Plaintiff shall have Costs and Damages, and the Defendant a *Retorno Habendo*, and no Costs or Damages. But, says he, if the Avowries are several, I think they shall recover Costs and Damages on both Sides.

Plaintiff only
amerced.

In *Mich.* 15 *Jac.* 1. *Rot.* 458. *B. R.* In Replevin against *A.* and *B.* the Plaintiff had a Verdict against *A.* and Damages and Costs, and *B.* was acquitted of the Taking, &c. and Damages and Costs assess'd for him; Judgment was, That the Plaintiff should only be amerced as to *B.* but that *B.* should have neither Damages nor Costs, because he ought not to have it by Law.

In 2 *Car.* 1. Property of an Heifer, Part of the Goods taken, came in Question, and found for the Defendant, and Damages and Costs; and another Issue was found for the Plaintiff, and Damages and Costs also assessed for him, and he had Judgment accordingly: But the Judgment for the Defendant was, That he should recover (not his Damages and Costs assessed by the Jury for taking the Heifer, but) his Damages *occasione Præmissorum* to such a Sum, *per Discretionem* of the Justices at his Request, and in that Behalf sustained, according to the Form of the Stat. *Quere*, if meant the Stat. 4 *Jac. supra*, & *vide* 2 *Lutw.* from fol. 1196 to 1204.

A.3 H.7. c. 10.
to be taken
strictly.
No Costs to
Avowances on
Error.

And note; It has been held upon the general Rule, (that all Statutes which give Costs are to be taken strictly) that the Stat. 3 *H. 7. c. 10.* is not to be extended farther than the Words thereof will bear; and therefore where a Replevin was against three Defendants, one whereof an Infant, all appear'd, and avow'd by Attorney, and Judgment being against the Plaintiff, he brings Error for the Infant's appearing by Attorney. But because he might have pleaded this in Abatement to the Avowry, and did not, it was held well, and Judgment affirm'd; but

but the Court would give no Costs to the Avowant for Reason *supra*, and said that such Statutes are a Sort of Penal Laws, and the said Stat. 3 H. 7. mentions only Writs of Error brought by any Defendant or Tenant, which does not extend to Avowants. *M. 2 W. & M. B. R. vide Salk. 205.*

In Replevin the Defendant avow'd as Overseer of the Poor for a Distress for a Poors Rate on 43 *El. c. 2.* and at the Trial the Plaintiff was nonsuit, and no Damages being found, it was afterwards mov'd for a Writ of Inquiry to supply this Omission, which was granted; because here if the Jury had inquir'd, it had been as an Inquest of Office on which no Attaint would have lain; and distinguish'd this Case from 1 *Sid. 389.* of an Avowry for a Rent-charge, according to 17 *Car. 2. c. 7.* for there the Writ of Inquiry was well denied; for by that Statute the same Jury are to inquire both of the Rent arrear, and of the Value of the Cattle. But the Stat. 43 *El.* does not tie it up to the same Jury. *Salk. 206.*

On Nonsuit in Replevin the Juries not giving Damages may be supplied.

By Stat. 11 *Geo. 2. c. 19.* If the Plaintiff in Replevin upon Distresses for Rent, Quit-Rents, Reliefs, Herlots, and other Services, shall become nonsuit, discontinue, or have Judgment against him, the Defendant shall recover double Costs.

For great Variety of Precedents of the Process in Replevins in *English*, see *Lilly's Entries*, Page 347 to 378. printed 1741.

C H A P. IV.

S E C T. I. Of Avowries.

Definition.

AN Avowry (as before is shewn) is where one takes a Distress for Rent, or other Cause, and the Owner sues a Replevin; then he who took the Distress must *justify* and *avow* the Taking, or shew Cause why he took it; as where he took it in his Right he must shew it, and *avow* the Taking; and where he took it in Right of another, he must then make Conuzance as Bailiff, &c.

In Replevin the Defendant may avow or justify at his Election; but if he justify, he shall not have a Return, as he shall where he avows. 3 *Lev.* 204, 205.

Difference.

See before in Pleas to Replevins, *Page* 65, 66, 67. the Difference between Pleas in Bar, and making Conuzance, and Justifications and Avowries.

Nature.

An Avowry is in the Nature of a Count or Declaration, and therefore ought to contain sufficient and certain Matter, whereupon there may be a Judgment to have a Return. 2 *Co.* 25. a.

Matter.

Form.

But if the Avowry, or any Declaration or Replication, wants only Form, or omits Circumstances of Time, Place, &c. there the Plea of the other Party may salve such Imperfections, but cannot supply Matter of Substance. *Ibid.* *vide ante.*

Substance.

Certainty.

That an Avowry requires Certainty, &c. *vide* *Hut.* 4. 1 *Vent.* 99. *Hob.* 176. *Cro. Jac.* 160, 162. *Cro. Car.* 260. *W. Jo.* 300. *Kelw.* 79. *T. Jo.* 138. *Hutt.* 50. *Winch* 31, 32. 1 *Danv.* 510.

Also the Defendant in Replevin need not aver his Avowry with an *hoc paratus est Verificare*; because the Defendant in his Avowry is the Actor, for therein he shews his Matter (or Complaint of Wrong done) which is a Count, and prays to have a Return; and therefore as Plaintiff he shall not aver his Avowry no more than the Plaintiff shall aver his Count. *Plowd.*

163, 342.

Also an Avowant shall not be driven to alledge Seisin within the Time of the Statute of Limitations, (*viz.* 32 H. 8. cap. 2.) but that must be shewn on the other Side. (*Sed Quære.*) 8 Co. 65. Seisin alledg'd.
Stat. 32 H. 8.

In an Avowry for Rent, Seisin must be alledg'd within fifty Years, before the making of the Avowry or Conuzance, by 32 H. 8. cap. 2. Rents.

Avowry upon a Tenure of Fealty, Rent and Suit of Court, the Plaintiff confesses the Tenure, but says, That neither the Avowant nor his Ancestors were seised of the Services, or any of them, within fifty Years; this is not good, because Homage, Fealty, &c. and such casual Services may not happen in fifty Years, and so out of the Stat. 32 H. 8. cap. 2. of Limitations. Services.
Casual.

3 Lev. 21.

And Note; Seisin of Services by the Hands of Tenant at Will shall not bind the Tenant. 8 H. 6. 1, 7.

Nor by the Hands of Lessee for Years. 2 H. 6. 2. b.

But where a Man makes a Gift in Tail, rendering Rent, he may avow without Seisin, because the Deed, and the Reversion, gives him a sufficient Privy. 8 H. 6. 18.

An Avowry was for a Relief upon the Tenure of Fealty, Rent, and Suit of Court, and good without mention of the Relief, because it is Parcel of the Tenure *de Communi jure*, and a Flower of it, and if separated from it must be shewn on the other Side. 3 Lev. 45. Relief.

If

Executors.

If Executors by 31 H. 8. cap. 37. avow for Arrears of Rent in Fee accrued to the Testator, they must shew that the Land continues in the Seisin of the Tenant, who ought to have paid it, or in the Hands of some other who claims by or for him, according to the said Stat. *Cro. El.* 547. See *Co. Lit.* 102. b.

And *Note*; An Avowry is not good in the Right of one Executor where there is another Executor not named. 12 R. 2. *Fitz. Avowry* 88. 1 *Roll. Abr.* 319. b.

Tenants in Common.

One Tenant in Common cannot avow the Taking of the Cattle of a Stranger Damage-feasant, without making himself Bailiff or Servant to his Companion. 1 *Lilly's Abr.* 216.

And tho' they may join in Debt for Rent, &c. yet they cannot avow jointly, but must make several Avowries. *Lit. Sect.* 317. *Vide Salk.* 390. 1 *Roll. Abr.* 320. *W. Jo.* 253. *Cro. El.* 530.

Damage-feasant.

One avowed for Damage-feasant in his Common, but alledged no Damage to himself, this is naught, because he cannot distrain a Stranger's Cattle without a particular Damage. 3 *Lev.* 104. *Vide Bro. Common* 35. 15 H. 7. 13. 24 E. 3. 42. 1 *Roll. Ab.* 320. 12, 13. & 405.

Strangers.

Property.

In Avowry the Defendant says, That the Property is in a Stranger, *absque hoc* that they were the Plaintiff's; this is good either in Bar or Abatement, and the Defendant need not avow for the Return of the Goods; for they not being the Plaintiff's, the Avowant is to have a Return without it. *Cro. Jac.* 510. 2 *Lev.* 92.

Justification.

In Replevin, &c.

In Trespass the Defendant justified under a Presentment in a Court-Leet, without a Warrant from the Steward; this is naught. But in an Avowry as Bailiff to the Lord, there need not be alledged any Warrant or Precept from the Steward. For in Trespass 'tis sufficient to justify the Officer, to shew there was such a Presentment and Amercement, because that Action tries the Authority only; but in Replevin the Suit is not so much for Damages as to try the

Right;

Right; and therein 'tis not sufficient to set out an Authority, but must make out a Right. *Show. 61, 62. Salk. 407, 409.*

So in Trespass, if the Defendant justifies Damage-feasant, or by Distress for Rent; he must make himself Bailiff to the Person that has (or claims) the Right, or that he did it by his Command; but the Command therein is traversable: *Aliter* in Replevin, where the Avowant makes Conuzance on the Right. *Salk. 409.*

In Trespass.

Diversity.

1 Lev. 150. 2 Leon. 115. 1 Roll. Rep. 46.

A Serjeant at Mace justified under a Precept on a Plaint in Replevin out of the Sheriff's Court in London; and held ill for want of shewing that the Precept was return'd; for where a principal Officer justifies under a returnable Writ, he must shew it was return'd; *aliter* of Subordinate Officers. *Salk. 409.*

But Note; A Replevin, or *Alias* Replevin, are not returnable Procefs; *contra* of a *Pluries* Replevin. *Ibid. 410.*

In Replevin the Defendant avows, That he was possess'd of a Term still in Being, and leas'd it to the Plaintiff; this is naught; for tho' *possessionatus fuit* be good in Debt for Rent, yet it is not in Replevin; for in Replevin the Defendant must set forth his Title, and how he became possess'd. *2 Mod. 70, 71. Lutw. 1165, & 1492. Vide post.*

Possessorat.

But see below in this Chapter *ad finem*, Sect. 3. the Stat. 11 Geo. 2. cap. 19. as to this Point.

Note; At Common Law the Lord might avow upon his Tenant for Rents, Services, &c. after four several Methods and Manners. *Vide Co. Lit. 269. b. 9 Co. 135. Raym. 257.*

Avowries at Common Law.

1. Upon one as his *very Tenant*, by Reason of the Tenure; as where the Lord had a Fee in the Seigniorie, and the Tenant had also a Fee in the Tenancy.

2. Upon one as his *very Tenant by the Manner*; as where such Tenant made a Lease for

G

Life,

Life, or a Gift in Tail, with Remainder in Fee; there the Lord might avow upon such Lessee, or Donee, as on his very Tenant by the Manner. 20 H. 6. 9. b.

But then the Lord ought to shew this Matter in his Avowry. 15 E. 4. 14. Vide 4 H. 6. 14.

3. Upon one as his *Tenant by the Manner*, omitting (*very*) as when the Lord had only some particular Estate in the Seignior; as in Tail for Life, or a less Estate; and so (say some) when the Tenant had a less Estate than Fee-simple. Vide 21 H. 6. 22. 2 H. 4. 24. Pl. 13.

And that in this Manner the Donor should avow on the Donee, the Lessor on the Lessee for Life or Years. Vide 9 Co. 135.

4. Upon the *Matter in the Land*; as within his Fee and Seignior; as where Tenant by Knights-Service made a Lease for Life rendring Rent, and died, his Heir within Age; the Guardian in Chivalry might avow on the Lessee *super Materiam prædict. in Terris & Tenementis prædict. ut infra Feodum & Dominium suum*. Vide 38 H. 6. 23. pl. 7.

By Statute

21 H. 8. c. 19.

But by the Stat. 21 H. 8. cap. 19. any Lord may avow the Taking of a Distress within the Tenancy, as in Lands or Tenements within his Fee or Seignior, without avowing upon any Person in certain. 9 Co. 23, 36, 136. Ray. 257. See below Sect. 3. *ad finem*.

Yet he is at Liberty still to avow as at Common Law. Vide *ibid.* & Co. Lit. 168, 169.

SECT. II. Who shall avow.

The King.

THE King having the Profits of Lands by Outlawry in any personal Action (as well as real) may avow. 15 H. 7. 2. pl. 4.

The Lord.

The Lord may avow, as before is shewn, either at Common Law or by the Statute. 21 H. 8. cap. 19.

Guardian

Guardian in Socage may avow for Damage- In Socage.
feasant in his own Name, for he hath the Go-
vernance of the Land. *Vide* 17 H. 7. 46.

Cestuy que Use before the Stat. 27 H. 8. could *Cestuy que Use*.
not avow for Damage-feasant in his own Name,
because at Common Law he had nothing in
the Land but only the Occupation at Sufferance
of the Feoffees. *Vide* 15 H. 7. 2, 12, 13. &
17 H. 7. 41.

But since that Statute he may avow in his
own Name, &c. or he may justify in the Name
of the Feoffees. (*Quere.*) 17 H. 4. pl. 7.

A Commoner may avow for Damage-feasant Commoner.
tho' he be but a Copyholder, or Tenant for Copyholder.
Years. 8 Co. 78. 9 Co. 112. 17 H. 7. 41. 15
H. 7. 8.

And 'tis said he need not shew *per quod ami-* Tenant for
fit Communiam. Nov. Lib. Intr. 573. D. Sect. 4. Years.
But this has been otherwise adjudg'd. And see
9 Co. 113. who ought to shew it.

Tenant at Will may avow for Damage-feasant. At Will.
Vide 15 H. 7. 2. pl. 4. Lib. Intr. 561. b. Sect. 1.
8 Co. 78. Telv. 130.

But Tenant at Sufferance cannot avow for At Sufferance.
Damage-feasant. 17 H. 7. 47.

Yet in Trespafs he may justify Damage-fea-
sant, for he ought to have the Profits till he that
has Right enter upon him. 4 H. 7. 3. pl. 6.

A Parson may avow for a Rent-charge by Parson.
Prescription. *Vide* Lib. Intr. 557. B. And so it
seems may any other. *Quere.*

An Executor may avow for Rent due *in vita* Executor.
Testatoris, by 32 H. 8. cap. 37.

And for Rent reserv'd by the Testator on a
Lease for Years he shall not be put to shew the
Testament. (*Quere.*) 12 R. 2. 163.

So an Administrator may avow for Rent due Administra-
tor.
in the Life of the Testator, by 32 H. 8.

So if a Rent be granted by Husband and Wife, Feme,
the Arrearages incur, and then the Husband
dies, the Wife may distrain and avow, &c.
29 E. 3. 40. pl. 19.

Baron and
Feme.

Husband and Wife in Right of the Wife may avow for Rent-service, *Lib. Intr.* 555. or for Rent due to the Wife after Coverture. 4 H. 6. 13.

But one cannot make Conuzance as Bailiff to the Husband and Wife, because a Feme-Covert cannot make a Bailiff. *Fitz. Avowry* 198. *vide ante*.

Bailiff.

In Replevin the Defendant may make Conuzance, or justify as Bailiff to *J. S.* *Salk.* 107.

And *Note*; In Replevin the Bailiff is an Actor, and shall recover upon the Merits; *contra* in Trespass. *Ibid.* 108.

SECT. III. For what one may avow.

Homage, &c.

FOR Homage, Fealty, or other Services, the Lord might distrain and avow, &c. *Vide* 4 Co. 6.

Services.

So for Rent-service; but if he were to render one Thing or another, he shall avow accordingly, *in hoc casu enim Tenens habet Electionem, & unum solvendo liberatur.* *Braet. Lib.* 2. fol. 35.

Rents.

And so it seems for Rent-charge, as well as Rent-service; and if he avows for two Rents where one Rent Day is not come, the Avowry shall abate only for that which is not come. 8 Co. 43.

Vide 21 H. 7.
79. pl. 27.

Also the Avowry shall not be for the double Rent, but only for the Quantity of the single Rent. 16 H. 7. 4. pl. 2.

Reliefs.

An Avowry may be for a Relief, or a Heriot-service, for they are in Nature of Rent services. *Vide* 3 Lev. 35.

Heriots.

So it may be for Heriot-Custom. *Vide Nov. Lib. Intr.* 613. *Sett.* 22.

Fines.

So for a Fine in a Court-Leet, because it may be distrained for. *Vide ante* Distresses.

Forfeitures
and Statutes.

So for Forfeitures upon divers penal Statutes, as the Stat. 4 H. 7. cap. . . for a Moiety of the Value

Value of the Land; and the Statute for Maintenance of Husbandry; and other Statutes that give a Distress.

So for Amerciaments in a Leet. 20 H. 7. 66. Amerciaments.
Or in the Sheriff's Torn. 28 E. 3. 95.

So for Amerciaments in a Court-Baron, where the Distress is by Custom. 20 H. 7. 66. *Dyer* 322. And for an Amerciament for the Tenant's not coming, they may distrain, if it be assessed by the Assessors, otherwise not.

So for a Corrody granted by Deed with Clause Corrody.
of Distress one may avow, otherwise not. 27 E. 3. 81.

For Damage-feasant one may avow, as before Damage-feasant is shewn. *Vide* 8 Co. 89. b. *Francis's Case*. But if the Cattle is chased out before he distrains, he cannot avow the Distress. 9 Co. 22. 16 E. 4. 10.

In Replevin the Defendant shews his Freehold, and avows for Damage-feasant; and because it was found the Freehold of him and his Wife, it was adjudg'd against him, for both were seised. *Trin.* 38 El. in C. B. *Walker* vers. *Bonner*.

The Defendant shews that A. was seised, Seisin.
(not shewing how) and that it descended to him, and that he was seised in Fee; adjudg'd good. *Trin.* 9 Jac. *Newton* vers. *Ansley*.

The Case of *Gilbert* versus *Parker*, *Pasche* Seisin al-
3 *Anne*, B. R. as reported by Serjeant *Salkeld*, ledg'd.

Page 629, 630. was thus: In Replevin for taking Cattle the Defendant made Conuzance, that A. his Master was seised of the *Locus in quo*, & per ejus Precept' he took them Damage-feasant. The Plaintiff replied, That he was seised of one third Part, and put in his Cattle, *absque hoc* that the said A. was solely seised. To this the Defendant demurr'd, and Judgment was given against him; for the Defendant makes Conuzance under his Master as sole seised, when he was only Tenant in common, in which Case he should have pleaded according to the Truth, that he was only Tenant in common, &c.

When the Defendant pleads his Master was seised in Fee of the Place *where, &c.* that must necessarily be understood that he is sole seised; and whatever is necessarily understood, intended and implied, is traversable as much as if it were expressed; and therefore though a Seisin in Fee be only alledged generally, yet that being intended a sole Seisin, the Plaintiff may traverse, *absque hoc* that he is sole seised; and since the Plaintiff makes himself Tenant in common with the Defendant, it had not been enough for him to say, that he is Tenant in common without traversing the sole Seisin.

Difference between Tenants in Common and Jointenants, &c.

Secondly, The Court held he might traverse, either *absque hoc* that he was sole seised, or that he was seised *Modo & Forma*. *Vide Hob. 119, 3 Cro. 795. Winch 7. 2 Mod. 6. Dyer 280.* of which Case the Court doubted, but said there might be a Difference between Parceners and Tenants in common, who are seised *per mie & per tout*. *Vide 1 E. 4. 9. 2 Vent. 228. Hut. 120. Hob. 72. Mo. 863. 37 H. 6. 31. Kel. 27. 1 Leon. 48. 32 H. 6. 2, 6. 21 E. 4. 65.*

But note; This Case is also reported, and somewhat more fully in *6 Mod. 158, 159.* And in the Conclusion of the Case it is said, There may be a Difference between Coparceners and Jointenants, and Tenants in common. For the two first are seised *per mie & per tout*, but the last have a several Seisin: And here to introduce his Traverse, he must make himself some Title to enable him to controvert with the Defendant; and there is no Difference between an Avowry and a Justification, as was urged, for in both if the Party sets forth a Falsity he is bound to maintain it. *Et Judgment pro Quer' Nisi, Per tot' Cur'.* See also the Authorities there cited.

Commencement of particular Estates.

In Replevin the Avowant said, That he was possessed for Years, and made an Under-Lease reserving Rent, &c. for which Arrear he distrain'd. The Plaintiff was nonsuit, and a Return irreplevisable awarded; and upon the Return

turn of the Writ of Inquiry, an Exception was taken that the Avowry was naught, for that the Avowant pleaded a particular Estate, without shewing who had the Fee, and the Commencement of the particular Estate; but *per Cur'*, though the Avowry be naught for that Cause, yet the Objection being after the Nonsuit, it is too late; for the Interlocutory Judgment is such on which a Writ of Error lies, as in Judgment on a Writ of Dower. *Mich. 3 Anne in B. R. 6 Mod. 223.* And see the Stat. 17 Car. 2. c. 7. *infra.*

An Avowry may be for one Thing, though the Distress was taken for another. *Bro. Di. stress 62. ante.* Yet an Avowry for Rent, where Part thereof is not due, is Error; but it may be cured before Judgment by abating the Avowry as to that Part of the Demand; as in the Case of *Richards versus Cornforth, Mich. 9 W. 3. B. R.* where Error was of a Judgment in Replevin, wherein the Defendant avow'd for Rent, and had Judgment in *C. B.* But on Error brought in *B. R.* it being shewn, that Part of the Rent became due after the Distress was taken, for the Distress was made the 26th of September, i. e. three Days before *Michaelmas* Day, whereas the Defendant had avow'd for Rent due on *Michaelmas* Day. And *per Cur'*, this is naught, for the Judgment is to have a Return irreplevisable, i. e. That he shall have the Distress as a Pledge till all the Rent avow'd for be paid, and that was more than was due at the Time of the Distress. And they said, that in this Case the Avowant before Judgment should have abated his Avowry *quoad* the *Michaelmas* Rent, and taken Judgment for the rest. But in this Case the Defendant got his Avowry amended in *C. B.* and thereupon the Roll was also amended in *B. R.* and so the Error was cured. *Vide Salk. 580.*

As to bringing Money into Court in Replevins and Avowries, there seem to have been re-

Avowry for Rent Part not due.

Ret' irrepleg'.

Amendment.

Money brought into Court.

pugnant Judgments. For in *Hill. 10 W. 3. B. R.* in a Replevin, where the Defendant avow'd for Rent, the Plaintiff was admitted to bring it into Court. *Salk. 597.*

But in *Hill. 12 W. 3. B. R.* it was held, That in an Avowry to a Replevin there could not be a *Profert* of the Money into Court, because the Avowry is to justify the Taking of the Cattle, and whether the Money was paid or not is not the Question; but if the Distress was rightfully taken, the Avowant must have a Return; but if wrongfully taken, he must answer the Plaintiff his Damages.

And accordingly was it held in the Case of *Horn and Lewen, Salk. 583.* where in Replevin the Defendant made Conuzance for 100 *l.* Rent in arrear for one Year. The Plaintiff as to 50 *l.* pleads *de injuria sua propria absque hoc quod fuit in arreiro.* And as to the other Fifty, that he was ready on the Land till Sun-set, and none came to receive it, and that he is still ready to pay it, and brings the Money into Court. The Defendant demurs specially to the first Plea, because it tends to the General Issue; and to the other 50 *l.* he takes it out of Court, & *pro Dampnis dicit quod non obtulit, &c.* and to this the Plaintiff demurr'd: And after several Arguments the Court held.

First, That *de injuria sua propria absque hoc, &c.* was an impertinent round about Way of Pleading the General Issue, and amounted to no more than *Riens en arriere*, and consequently ill on a special Demurrer; and that this Traverse put the Defendant to an unnecessary Replication, and therefore as to the first 50 *l.* it was clear for the Defendant.

Secondly, As to the other 50 *l.* the Court held, that the bare *Paratus* was not sufficient without an *Obtulit*; and therefore his being ready on the Land since he did not tender the Rent, did not oblige the Grantee to demand the Rent before he made the Distress, as in *Hob. 207. 1 Vent.*

322. and so the Distress was lawful without a Demand, and then the Avowry or Conuizance of the Defendant stands unanswer'd.

Thirdly, That the *Profert* of the Money was impertinent and idle, as *Kelw.* 20. *Dyer* 227. 2 *E.* 4. 25. *pl.* 15. 2 *Cro.* 126.

It is true, in Debt on Bond, &c. there may be a *Profert* to save Damages, because there the Money is the Thing in demand; but it cannot be in an Avowry to a Replevin for the Reasons *before-mentioned*, &c. If then the *Profert* was idle and superfluous, so was the Avowant's accepting it, and therefore Judgment must be given for the Avowant upon the Avowry, by which it appears that the Rent was behind, and the Distress lawful, to which there is no sufficient Answer. *Salk.* 583, 584. *Vide supra.*

By the Stat. 17 *Car.* 2. c. 7. " When a Plain- Stat. 17 *Car.*
" tiff is *Nonsuit* before Issue in any Suit of Re- 2. cap. 7.
" plevin, remov'd or depending in any of the
" Courts at *Westminster*, the Defendant making
" Suggestion in the Nature of an Avowry for
" Rent, the Court on his Prayer shall award a
" Writ to the Sheriff to inquire of the Sum in
" Arrear, and the Value of the Distress; where-
" upon Notice of fifteen Days shall be given to
" the Plaintiff, or his Attorney in Court, of
" the Sitting of such Inquiry, and upon Return
" of the Inquisition the Defendant shall recover
" the Arrears, if the Distress amounts to that
" Value, or else the Value of the Distress with
" Costs, and shall have Execution thereupon, by
" *Fi Fa* or *Elegit*, or otherwise, as the Law
" shall require.

" If such Plaintiff be nonsuit after Avowry
" and Issue joined, or if the Verdict be against
" him, the Jury at the Defendant's Prayer may
" inquire, and the Avowants recover, &c. *ut*
" *supra.*

" And if Judgment be upon Demurrer for
" such Avowant, the Court, at the Defendant's
" Prayer,

"Prayer, shall award a Writ to inquire the
 "Value of the Distress, whereupon he shall have
 "Judgment, &c. *ut supra*.

"Where the Distress shall not be found to be
 "to the Value of the Arrears, the Party may
 "distrain for the Residue.

Stat. 4 & 5
Annæ, c. 16.

And by the Stat. 4 & 5 *Annæ*, For the A-
mendment of the Law, it is enacted, "That
 "any Defendant or Tenant, in any Action or
 "Suit, or any Plaintiff in Replevin, in any
 "Court of Record, may, with Leave of the
 "same Court, plead as many several Matters
 "thereto as he shall think necessary for his De-
 "fence.

And by Stat. 11 *Geo. 2. c. 19.* Defendants in
 Replevin may avow or make Conuzance gene-
 rally, *That the Plaintiff in Replevin, or other*
Tenant of the Lands, &c. where the Distress
was made, enjoyed the same under a Grant or
Demise, at such a certain Rent, during the
Time wherein the Rent distrained for incurred,
which Rent was then and still remains due:
Or, that the Place where the Distress was taken
was Parcel of such certain Tenements held of
such Manor, Lordship, &c. for which Tenements
the Rent, Relief, &c. distrained for, was at
the Time of such Distress, and still remains
due, without setting forth the Grant, Tenure,
Demise or Title of the Landlord, &c. and if
the Plaintiff be nonsuit, &c. the Defendant is to
 have double Costs.

It frequently happened, that Landlords bring-
 ing an Action on the Case to recover a rea-
 sonable Satisfaction for Lands, &c. occupied by
 the Defendant, there appeared in Evidence on
 the Trial, some written Agreement or Parol De-
 mise, with a certain Rent reserved, by which
 the Plaintiff was nonsuit; but this is remedied
 by the Stat. 11 *Geo. 2. c. 19.* and it is thereby
 enacted, That such Demise or Agreement may
 be made use of as an Evidence of the *Quantum*
 of the Damages to be recovered.

See

See other Statutes concerning Avowries, viz.
*Stat. West. 2. c. 2. Stat. 7 H. 8. c. 4. Stat. 21 H.
 8. c. 19. Stat. 19 Car. 2. c. 5. &c.*

CHAP. V.

SECT. I.

Anno Tertio Georgii Regis, c. 15.

*An Act for the better Regulating the Office of
 Sheriffs, and for Ascertaining their Fees, and
 the Fees for suing out their Patents, and
 passing their Accounts.*

§. 1. **F**OR the greater Ease of Sheriffs in the Execution of their Offices, and passing their Accounts, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That the several Officers of his Majesty's High Court of Chancery, Court of Exchequer, and the several Auditors and Receivers of the Revenue of the Crown in *Wales*, and their respective Substitutes, Deputies, Agents, Clerks, and all other Officers and Persons whatsoever, having and claiming any Fee or Reward whatsoever to be due and payable to him or them from any Sheriff, Deputy-Sheriff or Under-Sheriff of any County in *England* and *Wales*, for making out his or their Patents or Commissions, or the *De-dimus* for Swearing them into their Office, or for Entering their Recognizance or Security, or for Writing out and Return of their Process, or for their Appofals, or casting out of Court, or

Clerks and Officers concern'd in passing Sheriff's Patents, or their Accounts, to take only the Fees in the Schedule annex'd, on Forfeiture to the Party grieved, of *5 l.* and treble the Sum taken above the said Fees, with treble Costs, to be ordered on Complaint by the Exchequer in a summary Way.

for

for passing their Accounts, or for making their *Quietus*, or for any other Matter or Thing whatsoever touching or concerning their Sheriffalty, may from and after the first Day of *Michaelmas* Term, in the Year of our Lord One thousand seven hundred and seventeen, severally and respectively, for themselves, and the Persons for whom they act and officiate, receive and take for their Pains and Service in the Matters aforesaid, the several Fees or Sums of Money in the Schedule or List hereafter mentioned or specified: All which Fees in the said Schedule mentioned, the said several and respective Officers, Deputies, Clerks, and other Persons, may claim, take and receive, from Time to Time, and shall not demand, take or receive any other or greater Fee or Reward whatsoever, in any wise touching or concerning the Premises in the said Schedule mentioned, or any other Matter or Thing relating to the Patent or Swearing of any Sheriff, or to the Passing of his Accounts; and if any Person shall offend herein, such Person shall forfeit to the Party aggrieved five Pounds, and treble the Sum by him taken, over and above just Fees mentioned in the said Schedule, together with his treble Costs; all which shall be ordered, awarded and given to the Party aggrieved by the Court of Exchequer, upon Complaint and Proof of such Offence made and exhibited before the Barons of the said Court, in such short and summary Way and Method as to them shall seem meet.

The Lord
Treasurer,
Chancellor of
the Exche-

§. 2. And whereas the Profers payable by the Sheriffs of the several Counties of *England*, into the Receipt of the Exchequer at *Easter* quer, and Barons, or any two of them, may order Clerks and Officers of the Exchequer, &c. to give in a Particular of Rents and Certainities yearly set in Process to Sheriffs, and reduce and settle the same, with Regard had to the Value of the Rents of each County, and Orders thereupon to be made and entred of Record in the Exchequer; and the Rents so settled to be the Profers of each County, payable to the Sheriff, and no other.

and

and *Michaelmas* yearly, remain the same at this Day that they antiently were, although many of the Rents and Certainties out of which the said Payments arise, have, of late Years, been alienated from the Crown: Be it further enacted by the Authority aforesaid, That the Lord High Treasurer of *Great Britain*, or Commissioners of the Treasury for the Time being, the Chancellor and Chief Baron of his Majesty's Court of Exchequer, and the Rest of the Barons of that Court, or any two or more of them, shall and may from Time to Time, at the Request of any Sheriff or Sheriffs, or as often as they shall think fit, call before them the Remembrancer in the Court of Exchequer (commonly called the Treasurer's Remembrancer) and the Clerk of the Pipe, or their Deputies, Secondaries, and such other Officers as they shall think fit; and shall cause the said Officers, or some of them, to bring before them an Account or Particular of all the Rents and Certainties written out yearly in Processes, to the Sheriff of each respective County in *England*, to levy for the Crown; and upon due Examination and Consideration thereof had, are hereby impowered and required, from Time to Time, to alter, diminish, reduce or establish the several Sums wherewith the said Sheriffs stand, or shall stand chargeable on the Rolls of Profers in the said Court of Exchequer, to such reasonable and moderate Sums as to them shall seem just and reasonable, with Regard to the Amount or Value of the Rents in each County respectively; and that Orders of the Court of Exchequer be drawn up pursuant thereunto, and entred upon Record in the several Offices of his Majesty's Remembrancer, the Lord Treasurer's, or the Commissioners of the Treasury's Remembrancer, and Clerk of the Pipe, some Time before the last Day of *Michaelmas* Term then next following; and that, from Time to Time, the Sum and Sums of Money so reduced, ascertained and settled,

settled, shall be deemed and taken to be the Profers of each respective County, and the Rolls of Profers, from Time to Time, shall be made conformable thereunto; and the said Sum and Sums so reduced, ascertained and settled as aforesaid, and no other, shall be paid by the said respective Sheriffs for their Profers, at the Days and Times, and in the Manner formerly used for Profers.

Sheriff levying Debts, &c. (except Post-Fines) due to the Crown, by Process of the Pipe by *Levari Facias* to have 12 d. per Pound for the first 100 l. and 6 d. for every 20 s. above that Sum; and on Process by *Fi Fa* and Extent to have 1 s. 6 d. per Pound for the first 100 l. and 1 s. per Pound above, provided he answer the same on his Accounts by a Day to be fix'd by Warrant of the Barons.

§. 3. And be it enacted by the Authority aforesaid, That from and after the ninth Day of July in the Year of our Lord One thousand seven hundred and seventeen, all Sheriffs who shall levy any Debts, Duties, or Sums of Money whatsoever, except Post-Fines, due or hereafter to become due to the King's Majesty, his Heirs or Successors, by Process to them directed upon the Summons of the Pipe, or Green Wax, by *Levari Facias* out of the Court of Exchequer, shall, from Time to Time, for their Care, Pains and Charges, and for their Encouragement therein, have an Allowance upon their Accounts of Twelve-pence out of every Twenty Shillings, for any Sum not exceeding One hundred Pounds so by them levied or collected; and the Sum of Six-pence only for every Twenty Shillings over and above the first One hundred Pounds; and for all the Debts, Duties, and Sums of Money, (except Post-Fines) due or to become due to his Majesty, his Heirs and Successors, by Process and *Fieri Facias*, and Extent, issuing out of any of the Offices of the Court of Exchequer, the Sum of One Shilling and Six-pence out of every Twenty Shillings, for any Sum not exceeding One hundred Pounds so by them levied or collected; and the Sum of Twelve-pence only for every Twenty Shillings over and above the first One hundred Pounds: Provided always such Sheriff shall duly answer the same upon his Account by the General Sealing Day of such Term in which he ought to be dismissed the Court, or in such Time to which he shall have a Day

granted

granted to finish his said Accounts, by Warrant sign'd by the Lord Chief Baron, or one of the Barons of the Coif of the said Court for the Time being, and not otherwise.

§. 4. And whereas by Virtue of an Act made in the fourth and fifth Years of the Reign of their late Majesties King *William* and Queen *Mary*, for encouraging the Apprehending of Highwaymen; and of one other Act made in the sixth and seventh Years of his said late Majesty King *William* the Third, to prevent Counterfeiting and Clipping the Coin of this Kingdom; and one other Act made in the fifth Year of her late Majesty Queen *Anne*, for encouraging the Apprehending of House-breakers, the respective Sheriffs of *England* and *Wales* are obliged to pay the several Rewards of forty Pounds, as in those Acts is directed, upon the Convictions of Highwaymen, Clippers, Coiners, or House-breakers, to such Person or Persons who shall bring to such Sheriff a Certificate under the Hand of the Judge or Justices before whom such Offenders were convicted, directing Payment thereof, under the Penalty of forfeiting to the Party intitled thereunto double the Sum so certified, with treble Costs of Suit; which said Reward of Forty Pounds being so paid as aforesaid, is by the said several Acts ordered to be allowed to such Sheriff upon his Account; and if there should not be remaining in the Hands of such Sheriff Monies sufficient for that Purpose, that in such Case the Surplusage occasioned thereby, should be repaid to such Sheriff by the Lord High Treasurer, or the Commissioners of the Treasury for the Time being, out of the Revenue of the Crown, upon Certificate thereof from the Clerk of the Pipe, or by the Auditor of *Wales*, as by the said respective Acts may more at large appear: And whereas since the making of the said Acts it hath been found, that many Sheriffs have been put under great Difficulties and Inconveniencies thereby, not only by reason of

Sheriff not obliged to charge in his Accounts Money paid by Virtue of the Acts 4 & 5 *W. & M.* for apprehending Highwaymen, or 6 & 7 *W. 3.* for preventing Counterfeiting and Clipping the Coin, or 5 *Anne* for apprehending House-breakers; but may on the Judge's Certificate of the Conviction of such Offenders, and the Receipt of the Party intitled to the Reward, apply to the Lord Treasurer, &c. who shall forthwith repay him the Sums so disbursed, without Fee.

of paying down great Sums of Money for the Rewards aforesaid, before the publick Revenue writ out to them in Process could be levied or collected by them, but also by Reason that such Sheriff cannot have a Certificate of his Surplusage from the Clerk of the Pipe, or the Auditor of *Wales*, until he hath fully finished his Account, and be dismissed the Court; by which Means the Sheriff is kept a long Time out of his Money so disbursed for the Rewards aforesaid: Be it therefore enacted by the Authority aforesaid, That no Sheriff shall be obliged to bring or charge in his Accounts any Sum or Sums of Money to be paid for the Rewards above-mentioned, or any of them, from and after the ninth Day of *July* One thousand seven hundred and seventeen, but shall and may immediately apply for the same to the Lord High Treasurer of *Great Britain*, or Commissioners of the Treasury for the Time being, who, upon inspecting a due Certificate of the Conviction of such Offender or Offenders, for which such Reward shall be ordered to be paid as aforesaid, by Virtue of the said Acts, or any of them, together with the Receipts or Acquittances of the Parties intitled to receive the same, shall forthwith repay to such Sheriff or Sheriffs respectively, all such Monies so disbursed and paid as aforesaid, without any Fee or Reward whatsoever; any Thing in the aforesaid Acts, or any of them, contained to the contrary thereof in any wise notwithstanding.

No Sheriff or Under-Sheriff to be attached, &c. for not finishing his Accounts in Time, or for any Neglect relating thereto, but by Writ under the Exchequer Seal, or by Warrant of a Baron to be executed by the Marshal of that Court, or his Deputy, wherein such Sheriff or Under-Sheriff's Name shall be inserted, and his Offence expressed.

whatsoever relating to his Account, but by Writ under the Seal of the said Court of Exchequer, or by Warrant for that Purpose to be signed by the Lord Chief Baron, or one of the Barons of the Coif of the said Court of Exchequer for the Time being, to be executed by the Marshal of the said Court, or his Deputy; in which Warrant the Name of such Sheriff or Under-Sheriff shall be particularly inserted, and his Offence particularly specified and expressed.

§. 6. And for preventing Delays and unnecessary Attendance of Sheriffs in passing their Accounts, be it enacted by the Authority aforesaid, That from and after the first Day of *Michaelmas* Term in the Year of our Lord One thousand seven hundred and seventeen, if any Officer, Clerk, or other Person concerned in or about the passing of Sheriffs Accounts, shall wilfully retard or hinder any Sheriff in the passing of his Accounts; or by his wilful Neglect or Absence, or by other undue Means or Ways, prevent any Sheriff from being apposed or cast out of Court in due Time, or after Payment or Tender of his or their due Fees herein ascertained, shall refuse or neglect to inrol, make out, sign and deliver his *Quietus* in due Time, in every such Case the Person so offending shall make such Recompence and Satisfaction to the Party aggrieved as shall be adjudged, ordered or decreed, by the Barons of the Court of Exchequer, upon Complaint thereof made and exhibited before them in such short and summary Way and Method as to them shall seem meet.

Party grieved, as the Barons on Complaint shall order in a summary way.

§. 7. And whereas it frequently happens that a Sheriff may disburse more Money for the Service of *England* (except for *Chester*, *Lancaster*, *Durham*, and the *Welsh* Counties) who shall be in Surplusage by any Disbursements for the King's Service, except the Rewards appointed by the Acts, *supra* §. 4. shall be obliged to take out a Record of such Surplusage, but may apply to the Lord Treasurer, who is to pay the same on producing the Clerk of the Pipe's Certificate thereof,

If any Clerk, or other Person concerned in passing Sheriffs Accounts, shall hinder or retard the same, or any ways prevent his being apposed, and cast out of Court in due Time, or after Payment, or Tender of the Fees, *infra*, shall refuse or neglect to make out, or sign and inrol his *Quietus*, he shall make such Satisfaction to the

No Sheriff in *England* (except for *Chester*, *Lancaster*, *Durham*, and the *Welsh* Counties) who shall be in Surplusage by any Disbursements for the King's Service, except the Rewards appointed by the Acts, *supra* §. 4. shall be obliged to take out a Record of such Surplusage, but may apply to the Lord Treasurer, who is to pay the same on producing the Clerk of the Pipe's Certificate thereof,

vice of the Crown than his whole Charge amounteth unto, by Reason whereof such Sheriff must necessarily be in Surplusage upon his Account: And whereas such Surplusage cannot be obtained by the usual Course of the Exchequer, but by Record of Surplusage, which is very dilatory and expensive to the Sheriff; be it therefore enacted by the Authority aforesaid, That from and after the first Day of *Michaelmas* Term aforesaid, if any Sheriff of any County in *England*, (except the Counties Palatine of *Chester*, *Durham* and *Lancaster*, and the several Counties of *Wales*, which do not pass their Accounts before the Clerk of the Pipe) shall happen to be in Surplusage upon his Account, by Reason of any Disbursements whatsoever by him made for the Service of his Majesty, his Heirs or Successors (other than for the Rewards of Forty Pounds severally and respectively allowed and given by Virtue of the several Acts herein before-mentioned, to such Persons as shall apprehend a Clipper, Coiner, Highwayman or House-breaker) such Sheriff shall not be obliged to take out a Record of Surplusage for the same, but shall and may apply to the Lord High Treasurer of *Great Britain*, or to the Commissioners of Treasury for the Time being, for the Payment of such Surplusage from the Clerk of the Pipe, or his Deputy.

Sheriff dying before his Office expired, his Under-Sheriff or Deputy shall continue in Office and execute the same in

§. 8. And whereas great Inconveniencies have arisen by the Death of Sheriffs, during the Time of their Sheriffalty; be it enacted by the Authority aforesaid, That if any High-Sheriff of any County of *England* or *Wales* shall happen to die before the Expiration or Determination of his Year, or before he be lawfully superseded, in such Case the Under-Sheriff or the deceased Sheriff's Name, till a new Sheriff sworn, and be answerable for the Execution thereof during such Interval as the deceased Sheriff would have been; and the Security given by the Under-Sheriff to the Deceased, for the due Performance of his Office, is to continue during such Interval.

Deputy.

Deputy-Sheriff, by him appointed, shall nevertheless continue in his Office, and shall execute the same, and all Things belonging thereunto, in the Name of the said deceased Sheriff, until another Sheriff be appointed for the said County, and sworn in Manner as is herein after directed; and the said Under-Sheriff, or Deputy-Sheriff, shall be answerable for the Execution of the said Office in all Things, and to all Respects, Intents and Purposes whatsoever, during such Interval as the High-Sheriff so deceased would by Law have been if he had been living; and the Security given to the High-Sheriff so deceased by the said Under-Sheriff, and his Pledges, shall stand, remain, and be a Security to the King, his Heirs and Successors, and to all Persons whatsoever, for such Under-Sheriff's due Performance of his Office during such Interval.

§. 9. And whereas it frequently happens that the Process issuing out of the Court of Exchequer, for levying Debts and Duties due to the Crown, may be in Part executed by a Sheriff before he be superseded, and afterwards in Part by the subsequent Sheriff, and no Provision hath hitherto been made for settling and adjusting the Distribution of the Fees and Poundage claimed and demanded by them in such Case; be it therefore enacted by the Authority aforesaid, That when and so often as any Sheriff shall, by Process out of the Court of Exchequer, seize or extend any Goods, Chattels, or Personal Estate, into the Hands of his Majesty, his Heirs or Successors, for any Debts or Duties due to the Crown, and shall die, or be superseded before a Writ of *Venditioni Exponas* be awarded to him for Sale of the same, or before such Sheriff hath made actual Sale thereof, and a Writ shall afterwards be awarded to a

When a Sheriff by Exchequer Process seizes or extends Goods or Personal Estate for the King's Debts, and dies, or is superseded before a *Venditioni Exponas* awarded or Sale, and the subsequent Sheriff makes Sale, &c. the Exchequer Court, if sitting, or if not, any Baron may settle and apportion the

Fees or Poundage between the precedent and subsequent Sheriffs, Regard being had to the Expences and Trouble of each Sheriff.

subsequent Sheriff, who by Virtue thereof shall make Sale or Disposition of such Goods, Chattels, and Personal Estate, so seised or extended by such preceding Sheriff as aforesaid; in such Case the Barons of the Court of Exchequer, if then sitting, and if not sitting, the said Barons, or any one of them, being of the Degree of the Coif, shall order, settle and apportion the Fees or Poundage due for such Seizure and Sale betwixt such preceding and subsequent Sheriffs, in such Manner and Proportions as to him or them shall seem meet, with Regard to the Expence and Trouble each respective Sheriff hath had or shall have in the Execution of the said Process.

None shall buy, sell, let or take to Farm any Office of Under-Sheriff, Deputy-Sheriff, Seal-Keeper, County-Clerk, Shire-Clerk, Gaoler, Bailiff, or other Office pertaining to the Sheriff; nor contract for, promise or grant for Money, &c. nor give, take, promise or receive any Consideration by themselves or others for the same, on Forfeiture of

500 l. one Half to the King, and the other to him that prosecutes in any Court of *Westminster* within two Years.

§. 10. And whereas the Office of Under-Sheriff, and other Offices and Places in the Disposal of the High-Sheriff, have of late Years been frequently sold, and let to Farm, contrary to several Statutes heretofore made for restraining Sheriffs from such Practices, and contrary to the Oath and Duty of a Sheriff, whereby many and great Inconveniencies have happened to the Subjects of this Realm by the Oppressions and Exactions of Under-Sheriffs, Bailiffs, and other Officers concerned in the Execution of the King's Process: For Remedy whereof, be it enacted by the Authority aforesaid, That from and after the said twenty-ninth Day of *September* in the Year of our Lord One thousand seven hundred and seventeen, it shall not be lawful to or for any Person or Persons whatsoever, to buy, sell, let, or take to Farm, the Office of Under-Sheriff, Deputy-Sheriff, Seal-Keeper, County-Clerk, Shire-Clerk, Gaoler, Bailiff, or any other Office or Place pertaining to the Office of High-Sheriff of any County or Shire in *England* or *Wales*, or to contract for, promise or grant, for Money, or other Reward or Benefit, the said Offices or

Places,

Places, or any of them; nor to give, take, promise or receive any other Consideration whatsoever for the said Offices, or any of them, directly or indirectly, by themselves, or any Person in Trust for them, or for their Use; and whoever shall offend therein shall forfeit the Sum of five hundred Pounds, a Moiety whereof to his Majesty, his Heirs and Successors, and the other Moiety thereof to such Person or Persons as shall sue for the same, to be recovered by Action of Debt, Bill, Plaint or Information, in any of the Courts of Record at *Westminster*, in which no Essoin, Protection, or Wager of Law shall be allowed, nor any more than one Imparance: Provided that such Suit be commenced within two Years after such Offence committed, and not otherwise.

§. 11. Provided that nothing in this Act before contained shall any ways hinder or prevent such High-Sheriff from constituting and appointing an Under Sheriff, or Deputy, to act in his Stead, as by Law he may and ought to do; nor to hinder the Under-Sheriff, in Case of the High-Sheriff's Death, when he acts as High-Sheriff, from constituting or appointing a Deputy, which he is hereby impowered to do; nor to hinder, prevent or abridge such Sheriff or Under-Sheriff from demanding, taking or receiving the just and lawful Fees and Perquisites of the Office of Sheriff, or any Place or Employment pertaining thereunto, or for taking Security for the due answering the same; nor to discharge, hinder or prevent such Under-Sheriff, Deputy-Sheriff, Seal-Keeper, County-Clerk, Shire-Clerk, Gaoler, Bailiff, or other Person, having or executing any Place or Office under such Sheriff, from accounting to the High-Sheriff for all such answering the same; nor discharge any Officer, in §. 10. from accounting to the Sheriff for Fees, &c. receiv'd, or giving Security so to do; nor hinder the Sheriff from allowing Salaries to the Under-Sheriff, and other Officers, for executing their Offices, nor any of them from receiving the same.

But nothing *ante* shall hinder a Sheriff from appointing an Under-Sheriff, or Deputy-Sheriff, nor an Under-Sheriff acting as High-Sheriff on his Death, &c. from appointing a Deputy, nor from taking the Fees of their Office, or for any Place or Employment pertaining thereto, or taking Security for

just and lawful Fees and Perquisites as shall by them, or any of them, be taken and received in their respective Offices, Places or Employments, nor for giving Security so to do; nor to hinder or prevent the High-Sheriff from allowing or securing such Salary or Recompence to his Under-Sheriff, Deputy-Sheriff, Seal-Keeper, County-Clerk, Shire-Clerk, Gaoler, Bailiff, or other Officer, for the Execution of the said Offices, Places or Employments, or any of them, as to him shall seem meet; nor to hinder or prevent the Under-Sheriff, Deputy-Sheriff, Seal-Keeper, or other Officer or Person aforementioned, from taking and receiving such Salary or Recompence for his or their Pains and Services therein.

Besides the Penalties in the Acts of 22 & 23 Car. 2. for better Recovery of Fines and Forfeitures to the King, made perpetual by 4 & 5 W. & M. the Barons may amerce Clerks of the Assizes, of the Peace, of Commissioners of Sewers, Clerks of the Market, Town-Clerks, &c. refusing or neglecting to return Estreats into the Exchequer, according as the said Acts direct;

§. 12. And for the more effectual enforcing and obliging the respective Clerks of Assizes, Clerks of Peace, Clerks of the Commissioners of Sewers, Clerks of the Market, Town-Clerks, or other Persons to whom it doth or may belong to make Returns of Estreats into the Court of Exchequer, to make out and deliver their respective Estreats, Duplicates, Certificates and Schedules, in due Time, so that the Sheriff may not be hindered or retarded in the passing his Account for want of the said Estreats, according to the Direction, Purport and Intent of an Act made in the two and twentieth and three and twentieth Years of the Reign of his late Majesty King Charles the Second, intituled, *An Act for the better and more certain Recovery of Fines and Forfeitures due to his Majesty*, and made perpetual by an Act made in the fourth and fifth Years of the Reign of their late Majesties King William and Queen Mary; be it enacted by the Authority aforesaid, That over and above the Penalties mentioned in the said Acts, or either of them, it shall and may be lawful to and for the Barons of the Court of Exchequer, from Time to Time, to amerce such Clerk of

the

the Affize, Clerk of the Peace, Clerk of the Commissioners of Sewers, Clerk of the Market, Town-Clerk, or other Person, to whom it doth or may belong to make Returns of Estreats into the said Court of Exchequer as aforesaid, for refusing, neglecting or omitting to perform and do his or their Duty in returning the said Estreats, at the Times and according to the Direction, Purport and Intent of the said two Acts, and to cause the Amercements to be levied and answered by such Ways and Means, and in such Manner, as other Amercements set in the said Court may or have been used to be done.

§. 13. And for preventing of Oppressions and Injuries which may happen to his Majesty's Subjects, by the Abuse of Sheriffs, Bailiffs, and others employed in levying and collecting any Debts, Duties or Sums of Money, due or hereafter to become due to his Majesty, his Heirs or Successors, by Process of the Court of Exchequer; be it enacted by the Authority aforesaid, That no Sheriff, Under-Sheriff, Bailiff, or other Person employed in levying or collecting any of the said Debts, Duties, or Sums of Money, shall take, ask or receive any Fee, Gratuity or Reward whatsoever, of the Person or Persons liable to pay the said Debts, Duties or Sums of Money, or of any other Person, for or upon Pretence of such levying or collecting, except the Sum of Four-pence only for an Acquittance for such Sum as shall be so levied or collected; which Acquittance such Officer is hereby required to give and deliver to the Person upon or from whom such Debt shall be levied, collected or received; and the Bailiff, or other Person receiving such Debt or Sum of Money, shall from Time to Time answer and account for the same to the Sheriff, or his Deputy, and may require an Acquittance also from such Sheriff, or his Deputy, for such Sum, who are hereby required to give the same, without any Fee or Reward, of and from such Debts or

No Sheriff, or other employed in levying Debts to the Crown, by Exchequer-Process, shall take any Fee or Reward for levying or collecting the same, except 4*d.* only for an Acquittance, which the Officer receiving is to give to the Party paying, and account for the same to the Sheriff, or his Deputy, and may take an Acquittance from the Sheriff, &c. without Fee; and the Sheriff is to answer it on his Accounts in the Exchequer.

Sums of Money so levied, collected or received as aforesaid, the said Sheriffs, and every of them, shall effectually discharge the said Debtors and Persons respectively, by totting and answering the same to his Majesty, his Heirs and Successors, upon their respective Accounts in the Exchequer.

And if a Sheriff, &c. shall nichil, or not answer such Debts collected, he forfeits for each Offence treble Damages to the Party, and double what is so nichil'd, or not answer'd, to be order'd by the Court of Exchequer, on Complaint and Proof, in a summary Way; and if a Sheriff or other Officer demands or takes any Money for executing such Process, or (as Fees) for collecting such Debts, or for not levying, or forbearing to levy any

§. 14. And in Case any Sheriff, Under-Sheriff, or Deputy-Sheriff, shall nichil, or not duly answer to the Crown any Debt or Sum of Money so levied, collected or received, such Sheriff, Under-Sheriff, or Deputy-Sheriff, for every such Offence shall forfeit treble Damages to the Party aggrieved, and double the Sum so nichilled, or not duly answered as aforesaid; which said Damages and Penalty shall be ordered, decreed and given to the Person aggrieved by the Court of Exchequer, upon Complaint and Proof of such Abuse as aforesaid, made and exhibited before the Barons of the said Court, in such short and summary Way and Method, as to them shall seem meet; And in Case any Sheriff, Under-Sheriff, Deputy-Sheriff, Bailiff, or other Person, shall presume to demand, take or receive any Sum or Sums of Money whatsoever, be the same more or less, of any Person whatsoever, from whom any Debt or Sum of Money is, or shall be due and payable to the Crown, by Process out of the Court of Exchequer, for or in Respect, or upon Pretence of executing the said Process, or for or in Respect, or upon Pretence of Fees due to them, or any of them, for collecting or receiving the same, contrary to the true Intent and Meaning of this Act; or if any of the Officers, or Persons aforesaid, shall demand, take and receive any Sum or Sums of Money whatsoever, for not levying, or forbearing to levy any Debts, Debt to the Crown so written in Process, and thereof convicted, he is guilty of Extortion, and forfeits treble Damages and Costs to the Party grieved, and double the Sum extorted, to be order'd by the Exchequer in a summary Way on Complaint and Proof, if convicted within two Years after the Offence.

Duties,

Duties, or Sums of Money, which are or shall be due to his Majesty, his Heirs and Successors, and written out to them, or any of them, by the Process aforesaid, in all and every such Case, every Person so offending, and thereof lawfully convicted, shall be adjudged, deemed and taken to be guilty of Extortion, Injustice and Oppression; and all and every such Person and Persons, being thereof lawfully convicted, shall forfeit for every such Offence treble Damages and Costs to the Party aggrieved, and double the Sum so extorted: All which Damages and Penalties shall be ordered, decreed and given by the Barons of the Court of Exchequer, upon Complaint and Proof of such Extortion made and exhibited before them in such short and summary Way and Method as to them shall seem meet as aforesaid: Provided such Conviction be had and made within two Years after such Offence committed, and not otherwise.

§. 15. Provided, that nothing in this Act contained shall be construed to deprive any Sheriff of such Poundage or Allowance as is allowed and given to them by Virtue of this Act, or of such Poundage, Allowance or Reward, as may hereafter be made, allowed and given to them, or any of them, by Warrant or Order from the Lord High Treasurer, or Commissioners of the Treasury, Chancellor of the Exchequer, or Barons of the Court of Exchequer for the Time being, for or in Respect of any extraordinary Service to the Crown that may happen to be performed by them, or any of them; but that the said Sheriffs shall and may enjoy the full Benefit and Advantage of such Poundage, Allowance and Reward, without any Impeachment or Molestation whatsoever; any Thing in this Act contained to the contrary thereof in any wise notwithstanding.

But the Sheriff may take such Poundage and Allowance as given by this Act, or by Warrant of the Lord Treasurer, or Chancellor, or Barons of the Exchequer, for any extraordinary Service to the Crown performed by him.

All Orders and Decrees made by the Barons of the Exchequer for Costs, Damages or Penalties by this Act ordered in a summary Way, to have the same Force and Effect as any other Order or Decree of the Court; and such Costs, &c.

raised and levied by such Process as is there used to enforce a Compliance with other Orders or Decrees.

§. 16. And be it enacted by the Authority aforesaid, That whatever Orders or Decrees shall be made by the Barons of the Court of Exchequer, for Costs, Damages and Penalties, in the Cases afore-mentioned, or any of them, or in any other Case in this Act hereafter mentioned, by Virtue and in Pursuance of this Act, in such short and summary Way and Method, as is herein before directed and prescribed, shall have the same Effect, Force and Virtue, to all Intents and Purposes, as any other Order or Decree of the same Court; and the said Costs, Damages and Penalties shall be raised, levied and obtained, by such Process, Ways and Methods, as are used in the said Court, to enforce a Compliance with any other Orders or Decrees of the same Court.

No Sheriff, Under-Sheriff, Deputy, or Bailiff of any Franchise, &c. shall for executing an *Habere Facias Possessionem aut Seisinam*, demand or receive above 12 d. per Pound of the yearly Value of any Manor, Messuage, Lands, Tenements or Hereditaments, whereof Possession or Seisin shall be given where the whole exceeds not 100 l. per Ann. or 6 d. for every 20 s. above 100 l. yearly Value.

§. 17. And for ascertaining the Fees for executing of Writs of *Elegit*, so far as the same relate to the extending of real Estates, and for ascertaining the Fees for executing of Writs of *Habere Facias Possessionem aut Seisinam*, be it enacted by the Authority aforesaid, That from and after the last Day of *Michaelmas* Term in the Year of our Lord One thousand seven hundred and seventeen, it shall not be lawful for any Sheriff, Under-Sheriff, Deputy-Sheriff, or their Bailiffs, or for the Bailiff of any Franchise or Liberry, or any of them, by Reason or Colour of their executing of any Writ or Writs of *Habere Facias Possessionem aut Seisinam*, to demand, ask or receive any other or greater Consideration, Fee, Gratuity or Reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken) that is to say, the Sum of Twelve-pence for every twenty Shillings of the yearly Value of any Manor, Messuage, Lands, Tenements and

Here-

Hereditaments, whereof Possession or Seisin shall be by them, or any of them given, where the whole exceedeth not the yearly Value of One hundred Pounds, and the Sum of Six-pence only for every twenty Shillings *per Annum*, over and above the said yearly Value of One hundred Pounds.

§. 18. And whereas it often happens that small Sums only are remaining due upon Judgments, Statutes and Recognizances given, acknowledged and entred into for great Sums and Penalties, and nevertheless in these Cases upon executing of Writs of *Capias ad Satisfaciendum*, the Sheriff demands and takes for his Fees Poundage for the whole Money for which such Judgments, Statutes or Recognizances are entred and acknowledged; which Poundage often far exceeds the Debts due to the Plaintiffs in such Writs: For remedying of which Grievance and Inconvenience, be it enacted by the Authority aforesaid, That from and after the said last Day of *Michaelmas* Term One thousand seven hundred and seventeen, Poundage shall in no Case be demanded or taken upon executing of any Writ of *Capias ad Satisfaciendum*, or upon charging any Person in Execution by Virtue of such Writ for any greater Sum than the real Debt *bona fide* due and claimed by the Plaintiff amounteth unto; which Sum the Plaintiff shall be, and is hereby obliged to mark and specify on the Back of such Writ, before the same be delivered to the Sheriff to be executed; and in Case any Sheriff, Under-Sheriff, Deputy Sheriff, Bailiff, or other Person, shall offend against the true Meaning hereof, by taking any greater Fees, Gratuity or Reward, than is herein before allowed, every such Person and for each Offence forfeits to the Party grieved treble Damages, and double what is so extorted, to be ordered by the Court which issued the Writ, on Complaint and Proof in a summary Way; and also 200 l. one Half to the King, and the other to the Prosecutor, in any Court at *Westminster*, if sued within two Years after the Offence.

Poundage not to be taken for executing any *Ca. Sa.* upon any Judgment, Statute or Recognizance (*whereof Part is paid*) for any greater Sum than what remains due and claim'd by the Plaintiff thereon, who is to mark the same on the Back of the Writ before it is delivered to the Sheriff; any Sheriff, Under-Sheriff, Deputy, Bailiff, &c. offending, and lawfully convicted, is guilty of Extortion, &c.

so offending as aforesaid, and being thereof lawfully convicted, shall be adjudged, deemed and taken, and is and are hereby adjudged, deemed and taken to be guilty of Extortion, Injustice and Oppression; and all and every such Person and Persons, being thereof lawfully convicted as aforesaid, shall for every such Offence forfeit to the Party aggrieved treble Damages, and double the Sum so extorted; which said Damages and Penalties shall be ordered, decreed and given to the said aggrieved Party by the Court out of which such Writ or Writs issued, upon Complaint and Proof of such Extortion made and exhibited before the Judges of such Court, in such short and summary Way and Method as to them shall seem meet; and over and above the said Damages and Penalties, every such Person so offending and convicted as aforesaid, shall forfeit the Sum of Two hundred Pounds; one Moiety whereof shall be to the King's Majesty, his Heirs and Successors, and the other Moiety thereof to such Person or Persons as shall so sue for the same, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of the Courts of Record at *Westminster*, in which no Effoin, Protection, or Wager of Law shall be allowed, nor any more than one Imparlance; provided such Suit be commenced within two Years after such Offence committed, and not otherwise: And provided likewise, That no Person be sued or prosecuted by Virtue of this Act, for any Offence of this Kind committed, before the said last Day of *Michaelmas* Term One thousand seven hundred and seventeen.

§. 19. And be it enacted by the Authority aforesaid, That instead of the Oath usually administered to Sheriffs at the entring upon their Offices, the following Oath shall be taken by them, and each of them respectively, (excepting the Sheriffs of the several Counties in *Wales*) and of the County Palatine of *Chester*; (*videlicet*)

The

The High-Sheriff's Oath.

I A. B. do swear, That I will well and truly The High-Sheriff's new
serve the King's Majesty in the Office of Sheriff of the County of and Oath.
promote his Majesty's Profit in all Things that
belong to my Office, as far as I legally can or
may; I will truly preserve the King's Rights,
and all that belongeth to the Crown; I will not
assent to decrease, lessen or conceal the King's
Rights, or the Rights of his Franchises; and
whenever I shall have Knowledge that the
Rights of the Crown are concealed or withdrawn,
be it in Lands, Rents, Franchises, Suits or Ser-
vices, or in any other Matter or Thing, I will
do my utmost to make them be restored to the
Crown again; and if I may not do it myself, I
will certify and inform the King thereof, or some
of his Judges; I will not respite or delay to levy
the King's Debts, for any Gift, Promise, Re-
ward or Favour, where I may raise the same
without any Grievance to the Debtors; I will do
Right, as well to Poor as to Rich in all Things
belonging to my Office; I will do no Wrong to any
Man for any Gift, Reward or Promise, nor for
Favour or Hatred; I will disturb no Man's
Right, and will truly and faithfully acquit at
the Exchequer all those of whom I shall receive
any Debts or Duties belonging to the Crown; I
will take nothing whereby the King may lose, or
whereby his Right may be disturbed, injured or
delayed; I will truly return, and truly serve all
the King's Writs, according to the best of my
Skill and Knowledge; I will take no Bailiffs into
my Service but such as I will answer for, and
will cause each of them to take such Oaths as I do,
in what belongeth to their Business and Occupa-
tion; I will truly set and return reasonable and
due Issues of them that be within my Bailiwick,
according to their Estate and Circumstances, and
make

make due Panels of Persons able and sufficient; and not suspected or procured, as is appointed by the Statutes of this Realm; I have not sold, or let to Farm, nor contracted for, nor have I granted or promised for Reward or Benefit, nor will I sell, or let to Farm, nor contract for, or grant for Reward or Benefit, by myself, or any other Person for me, or for my Use, directly or indirectly, my Sheriffwick, or any Bailiwick thereof, or any Office belonging thereunto, or the Profits of the same, to any Person or Persons whatsoever; I will truly and diligently execute the good Laws and Statutes of this Realm; and in all Things well and truly behave myself in my Office for the Honour of the King, and the Good of his Subjects, and discharge the same according to the best of my Skill and Power.

So help me God.

§. 20. And be it enacted by the Authority aforesaid, That the following Oath shall be taken by all Under-Sheriffs of any County or Counties in South Britain, except the several Counties of Wales, and County Palatine of Chester, before they enter upon the Execution of their Offices respectively; (*videlicet*)

The Under-Sheriff's Oath.

The Under-Sheriff's new Oath.

I A. B. do swear, That I will well and truly serve the King's Majesty in the Office of Under-Sheriff of the County of _____ and promote his Majesty's Profit in all Things that belong to the said Office, as far as I legally can or may; I will preserve the King's Rights, and all that belongeth to the Crown; I will not assent to decrease, lessen or conceal the King's Rights, or the Rights of his Franchises; and whensoever I shall have Knowledge that the Rights of the Crown are concealed or withdrawn, be it in Lands, Rents, Franchises, Suits or Services,

vices, or in any other Matter or Thing, I will do my utmost to make them be restored to the Crown again; and if I may not do it of myself, I will certify and inform some of his Majesty's Judges thereof; I will not respite or delay to levy the King's Debts, for any Gift, Promise, Reward or Favour, where I may raise the same without great Grievance to the Debtors; I will do Right as well to Poor as to Rich, in all Things belonging to my Office; I will do no Wrong to any Man for any Gift, Reward or Promise, nor for Favour or Hatred; I will disturb no Man's Right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any Debt, Duties, or Sums of Money belonging to the Crown; I will take nothing whereby the King may lose, or whereby his Right may be disturbed, injured or delayed; I will truly return, and truly serve all the King's Writs, to the best of my Skill and Knowledge; I will truly set and return reasonable and due Issues of them that be within my Bailiwick, according to their Estates and Circumstances; and make due Panels of Persons able and sufficient, and not suspected or procured, as is appointed by the Statutes of this Realm; I have not bought, purchased or taken to Farm, or contracted for, nor have I promised or given any Consideration, nor will I buy, purchase or take to Farm, or contract for, promise or give any Consideration whatsoever, by myself, or any other Person for me, or for my Use, directly or indirectly, to any Person or Persons whatsoever, for the Office of Under Sheriff of the County of *Gloucester* which I am now to enter upon and enjoy, nor for the Profits of the same, nor for any Bailiwick thereof, or any other Place or Office belonging thereunto; I have not sold nor contracted for, or let to Farm, nor have I granted or promised for Reward or Benefit, by myself, or any other Person for me, or for my Use, directly or indirectly, any Bailiwick thereof, or any other Place or Office belonging there-

Office of Sheriffs, and Ch. 5. §. 21, 22, 23.

thereunto; I will truly and diligently execute the good Laws and Statutes of this Realm; and in all Things well and truly behave myself in my said Office for his Majesty's Advantage, and for the Good of his Subjects, and discharge my whole Duty according to the best of my Skill and Power.

So help me God.

How and by whom to be administred.

§. 21. Which said Oath is hereby ordered and enacted to be administred and given by such Commissioners as shall be named and authorized to administer the foregoing Oath to the High-Sheriff in the County, when and so often as a Commission or *Dedimus* shall be sued forth of the proper Court for that Purpose, or by the Barons of the said Court, or one of them, when the said Sheriffs desire to be sworn in Town.

Sheriffs of *Wales* and *Cheeshire* to take the old Oath with an Omission.

§. 22. Provided that the Sheriffs of *Wales*, and the County Palatine of *Chester*, shall not be obliged to take the aforesaid Oaths, or either of them, but shall still take the usual and accustomed Oaths as they have formerly done, (except the Words following, *videlicet*,) *Ye shall be dwelling in your own proper Person within your Bailiwick for the Time ye shall continue in the same Office (except ye be otherwise licensed by the King);* which Words shall hereafter be left out of the said Oaths.

This Act not to extend to Sheriffs of *London* and *Middlesex*, or *Durham*, or *Westmorland*, or of any City or Town, being a County, as to their disposing of the Offices of Under-Sheriffs, County-Clerks, Bailiffs, &c.

§. 23. Provided that this Act, or any Thing therein contained, shall not extend to the Sheriffs of *London* and *Middlesex*, the County Palatine of *Durham*, the County of *Westmorland*, or to the Sheriffs of any City or Town being a County of itself, or to any of them, as to their placing in or disposing of any of the Offices, Places or Employments of their Under-Sheriffs, County-Clerks, Bailiffs, or other Officers, or their Continuance therein.

§. 24. And whereas in an Act made in the four and five and thirtieth Years of King Henry the VIIIth, intituled, *An Act for certain Ordinances in the King's Majesty's Dominions and Principality of Wales*, it is, amongst other Things, enacted, That there shall be Sheriffs in every of the twelve Shires of *Wales*, yearly appointed by the King's Majesty; and that the said Sheriffs shall yearly account before such the King's Auditor or Auditors as shall be assigned and appointed by the King's Majesty for his Dominions of *Wales*; be it therefore enacted and declared by the Authority aforesaid, That the said Sheriffs of *Wales* shall not be compelled to appear to be apposed in his Majesty's Court of Exchequer, but shall account before his Majesty's said Auditor, or the Auditors in the Principality of *Wales*, and not elsewhere; any Law, Statute, Custom or Usage, to the contrary notwithstanding: And that the *Quietus* of the said Sheriffs, under the Auditor's Hand, or his Deputy, shall be a sufficient Discharge for the said Sheriff in that Behalf.

Sheriffs in *Wales* to account before Auditors of *Wales*, as by Stat. 34 & 35 H. 8. and have their *Quietus* sign'd by them.

§. 25. And whereas by the Act made in the thirteenth and fourteenth Years of the Reign of King Charles the Second, intituled, *An Act for preventing the unnecessary Charge of Sheriffs, and for Ease in passing their Accounts*, it was, amongst other Things, provided, That the Sheriffs of the County of *Chester, Lancaster and Durham*, being Counties Palatine, as to their Manner of accounting, should account before the respective Auditors of the said Counties only, and not elsewhere; be it enacted and declared by the Authority aforesaid, That the said respective Auditors of the said Counties, or their Deputies, by Virtue of their respective Offices, shall and may take, state and allow the Accounts of the Sheriffs of the said respective Counties, and appose the said Sheriffs respectively touching the Execution of the Process of them respectively directed, called the King's Process; and

Sheriffs of *Cheeshire, Lancashire and Durham*, to account before the Auditors of those Counties, as by Stat. 13 & 14 Car. 2. and sue out their *Quietus*, &c. from those Auditors.

that the said respective Sheriffs, upon such their Accounts, touching the Premises, shall and may have, sue forth and obtain their respective *Quierus est* and Discharge from the said respective Auditors, or their Deputies, according to their ancient Course and Usage of the Sheriffs of the said Counties Palatine only.

Sheriffs of the City of *Chester* to account as formerly before the Mayor of that City, for all Matters and Things granted them by their several Charters.

§. 26. And be it further enacted by the Authority aforesaid, That the Sheriffs of the City and County of the City of *Chester*, and their Successors, shall and may account, as formerly, before the Mayor of the same City, and his Successors (for the Time being) for and touching all such Matters and Things as have been heretofore granted from the Crown to the same City in and by their several and respective Charters.

But for other Matters not so granted, before the Auditor of the County, as the Sheriffs of that County are *supra* appointed to do.

§. 27. And as for and concerning all other Matters and Things whatsoever, not mentioned to be granted in or by the Charters of or to the same City, and for which the Sheriffs of the same City are or ought to be accountable to his Majesty, his Heirs and Successors; it is hereby further declared and enacted by the Authority aforesaid, That the Sheriffs of the said City of *Chester*, and their Successors, shall at all Times hereafter account for and concerning the same, before, and be apposed by, and obtain their *Quierus est* and Discharge from the Auditor of the County of *Chester*, or his Deputy, in like Manner as the Sheriffs of the said County of *Chester* are by this Act appointed to do, and not elsewhere, or in any other Manner whatsoever.

THE SCHEDULE or LIST

In the ACT mentioned, viz.

A SCHEDULE of FEES to be paid for passing the Patents of the several Sheriffs of *England and Wales*.

The Charge taken and received in the Court of Chancery on Account of suing out of the Patents of the several Sheriffs of England and Wales, that are sued out there, for each the Particulars are as followeth:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
THE King's Duty for Stamps	00	12	06
To the Serjeant Trumpeter	03	00	00
To the Master of the Rolls	00	08	08
Signing the Docquet	00	04	00
Hanaper Fee	00	13	00
The Six Clerks Fee on the Patent, Writ of Assistance, Writ of Discharge, and <i>Dedimus Potestatem</i>	01	07	00
For ingrossing the Patent, Writ of Assistance, Writ of Discharge, <i>Dedimus Potestatem</i> , the three Oaths, the Docquet Parchment, and attending the Sealing the Patent	01	14	04
The Recognizance and Duty in a <i>Welsh</i> Patent, more	00	03	06

A SCHEDULE of FEES to be paid by the Sheriffs of *England* and *Wales* for passing their Accounts.

FEES to be paid to the Clerk of the Pipe at the Apposal of Sheriffs.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
C anterbury	01	13	04
Cumberland	01	13	04
York	05	00	00
Huntingdon	01	06	08
London and Middlesex	02	00	00
Lincoln	02	13	04
Monmouth	01	13	04
Northumberland	01	13	04
Rutland	01	06	08
Westmorland	01	06	08
The Rest of the Counties of <i>Eng-</i> <i>land</i> , each	02	00	00

FEES to be paid to the Clerk of the Pipe at casting out of Court, and for the Quietus, and Chancellor's Allowance.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
C anterbury and Huntingdon	04	03	04
Cumberland	02	16	08
York	10	03	04
Kent	04	03	04
London and Middlesex	05	06	08
Monmouth	02	16	08
Northumberland	02	16	08
Rutland	01	16	08
Westmorland	02	03	04
The Rest of the Counties of <i>Eng-</i> <i>land</i> , each	03	03	04

CASUAL

CASUAL FEES to the Clerk of the Pipe for the Allowance of Justices Wages in the Counties following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
YORK	01	00	00
London and Middlesex	00	13	00
Lincoln	00	10	04
The Rest of the Counties of <i>Eng-</i> <i>land</i> , if any such Allowance be made,	00	06	08
For Setting of a Seizure or Debt by Petition, or Judgment of Court, when it happens	00	01	00
For Allowance of a Record of Surplusage for the first five Pounds	00	06	08
For every other five Pounds	00	03	04

FEES to be paid to the Clerk of the Pipe for the several Cities and Accounting Towns for their whole Account, and Quietus thereupon.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
B ristol	} of each	01	10 00
Gloucester			
York			
Newcastle			
Canterbury	} of each	01	00 00
Coventry			
Exeter			
Litchfield			
Lincoln			
Norwich			
Kingston upon Hull			
Nottingham			
Pool			
Southampton			

F E E S to be paid to the Secondaries, and others the sworn Clerks in the said Office, at the Apposals of Sheriffs at the coming into their Account, and writing their Annual Books, together with the Vicontiels of the Foot or Charge of their whole Account.

		l.	s.	d.
B Edford		00	06	00
Berks	} each	00	06	00
Bucks		00	06	00
Canterbury and Huntingdon		04	13	04
Cornwall		06	00	00
Cumberland		03	13	04
Derby		05	03	00
Devon	} each	06	00	00
Dorset		06	00	00
Essex		10	06	08
York		17	00	00
Gloucester	} each	06	00	00
Hereford		06	00	00
Hertford		05	06	08
Kent		06	13	04
Lincoln		04	13	04
Leicester		06	13	04
London and Middlesex, two Sugar	} each	04	00	00
Loaves, and		03	00	00
Monmouth		06	13	04
Norfolk		08	10	00
Northampton		04	13	04
Northumberland		05	10	00
Nottingham		06	00	00
Oxford		03	06	08
Rutland		05	13	04
Surrey	} each	06	00	00
Suffex		06	00	00
Shropshire	} each	07	13	04
Suffolk		07	13	04
Southampton		07	13	04
Stafford				

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	l.	s.	d.
Stafford	05	13	04
Somerset	09	06	08
Westmorland	02	00	00
Warwick	04	16	08
Wigorn	06	00	00
Wilts	08	00	00

F E E S for casting out of Court, and for Quietus, &c.

	l.	s.	d.
B edford	06	00	00
Berks	05	06	08
Bucks	05	06	08
Canterbury and Huntingdon	04	13	04
Cornwall	05	13	04
Cumberland	04	13	04
Derby	05	06	08
Devonshire	08	06	08
Dorset	06	13	04
Essex	11	00	00
York	23	06	08
Gloucester	07	06	08
Hereford	06	00	00
Hertford	06	13	04
Kent	11	13	04
Lincoln	06	00	00
Leicester	08	06	08
London and Middlesex, two Sugar Loaves, and	04	00	00
Monmouth	03	03	00
Northampton } each	07	06	08
Norfolk			
Nottingham	06	06	08
Northumberland	04	13	04
Oxford	08	06	08
Rutland	02	00	00
Stafford	06	13	04
Surrey } each	05	16	08
Suffex			
Shropshire	05	06	08
	I 4		Suffolk

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
Suffolk	06	00	00
Southampton	08	06	08
Somerset	10	00	00
Westmorland	02	08	04
Warwick	05	10	00
Wigorn'	07	06	08
Wilts	08	13	04

FEES of Sheriffs for Cities and Accounting Towns.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
B ristol	03	06	08
Canterbury	02	13	04
York	05	00	00
Coventry	02	13	04
Exeter	01	10	00
Gloucester	02	13	04
Lincoln	02	13	04
Litchfield	01	06	08
Norwich	03	06	08
Wigorn'	02	00	00
Kingston upon Hull	03	06	08
Nottingham	02	00	00
Newcastle	02	13	04
Pool	01	10	00
Southampton	02	00	00

Memorandum, The Sheriffs of the Counties Palatine of Chester and Lancaster do not account before the Clerk of the Pipe, but before the respective Auditor of those Counties; but their Books being writ every Year, and Certificates made (of what they take in Charge) to the Auditor, the following Fees are to be taken by the Clerk of the Pipe, and the sworn Clerk for those Counties, (viz.)

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Chester	02	03	04
Lancaster	04	06	08

FEES

F E E S to be paid to the first Secondary.

	l.	s.	d.
FOR allowing the Sheriff's Tal- lies of Profer in each County	00	06	08
In each City and Town	00	03	04
Making up the Sheriff's Sum, containing his whole Charge in York.	00	13	04
London and Middlesex	00	13	04
For the Rest of the Counties, each	00	06	08
Allowing a Talley de remanente Compti, or any other Talley de Sol' in his Account, when such happen	00	01	00
For charging a Post Scrow, which rarely happens	00	13	04

To the second Secondary.

	l.	s.	d.
FOR drawing down a Debt re- ceived by Distringas, or levied by Writ of Fieri Facias from either of the Remembrancers Office upon the Scrow Back	00	03	04
If an extraordinary Length	00	06	08

To the Portubag.

	l.	s.	d.
FOR Ingrossing the Scrow of green Wax of the Sheriff of the County of York	01	00	00
London and Middlesex	01	00	00
The Rest of the Counties of Eng- land, each	00	10	00
For the accounting Towns and Ci- ties, each	00	03	04

Casual

*Casual and Accidental Fees to the sworn Clerks
in their respective Assignments, viz.*

FOR a Constable of a Seizure or Debt in order to be ruled or discharged	00	02	04
For settling of a Seizure or Debt upon a Sheriff's Account, by Petition or Judgment of Court, when it happens	00	03	04
Filing the Certificates of Felons Goods, and charging the Debts therein contained, each	00	06	08

For the Allowance of Justices Wages.

	l.	s.	d.
YORK	02	00	00
London and Middlesex	02	00	00
Lincoln	01	00	00
The Rest of the Counties of England, each	00	13	04

For Sheriffs Allowances.

	l.	s.	d.
YORK	00	13	04
London and Middlesex	03	06	08
The Rest of the Counties, each	00	06	08
Record of Surplusage for the first five Pounds	00	06	08
For every other five Pounds	00	03	04

To

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To the writing Clerk for the Business of the whole Year.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Canterbury and Huntingdon	05	00	00
Cornwall	06	00	00
Devonshire	06	00	00
York	15	00	00
Canterbury	07	00	00
Lincoln	06	10	00
London and Middlesex	06	00	00
Monmouth	03	00	00
Rutland	01	00	00
Somerset	07	13	04
Suffex	03	10	00
Westmorland	02	00	00
The Rest of the Counties, each	05	00	00
City of Bristol	01	00	00
City of York	01	00	00
City of Norwich	01	00	00
Kingston upon Hull	00	18	00
Newcastle	00	18	04
Pool	00	06	08
The Rest of the Cities, each	00	13	04
County Palatine of Chester	00	06	08
County Palatine of Lancaster	00	13	04
To be paid to the Bagman of the Office at the Apposal of the Sheriffs			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Of England, in each County, two Shillings and Six-pence, and the casting out	00	05	00
And for each City and Accounting Town	00	02	06

FEEs to be paid to the Controller of the Pipe.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR Apposal of London, Middlesex and York, each	02	00	00
For Apposal of Surrey, Suffex, Rutland and Westmorland, each	00	15	00
For			

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	l.	s.	d.
For Apposal of every other County	01	07	06
For casting out of <i>London, Middlesex</i> and <i>Tork</i> , each	02	00	00
For casting out of <i>Surrey, Suffex</i> and <i>Rutland</i> , each	00	15	00
For casting out of every other County	01	10	00
For return of Summons for <i>London, Middlesex</i> and <i>Tork</i> , each	00	05	00
For return of every other Summons	00	02	06
For Petitions, which seldom happen	00	02	06

The FEES to be taken by the three Clerks of the Comptroller of the Pipe in passing Sheriffs Accounts.

	Apposals.			Casting out.		
	l.	s.	d.	l.	s.	d.
B Bedford	each	01	02	06	01	00
Hertford						
Northampton						
Surrey	each	01	05	00	01	05
Rutland						
London and Middlesex	}	01	05	00	03	05
Cambridge						
Hereford	each	01	12	06	01	10
Leicester						
Norfolk						
Nottingham						
Stafford						
Warwick	each	01	15	00	01	15
Suffex						
Derby						
Oxford						

Canterbury

	Appofals.			Casting out.		
	l.	s.	d.	l.	s.	d.
Canterbury and Huntingdon	each	02	02	06	02	00
Gloucester		02	02	06	00	00
Kent						
Essex						
Bucks	each	02	09	02	02	06
Monmouth					08	
Berks						
Suffolk						
Southampton	each	02	09	02	02	06
Worcester					08	
Wiltshire						
Shrewsbury						
Northumber- land	each	02	09	02	02	06
Lincoln					08	
Cornwall						
Devonshire						
Dorset	each	03	09	02	03	06
Somerset					08	
York						
Westmorland						

For Return of every Summons, seven Shillings and Six-pence, except *London* and *Middlesex*, fifteen Shillings; *Tork*, one Pound and five Shillings; and *Cornwall*, *Devon*, *Dorset*, *Lincoln*, *Somerset*, *Suffolk*, *Southampton*, *Wilts* and *Shrewsbury*, each seventeen Shillings and Six-pence. For the Petition of Allowance, three Shillings and Six-pence, except in *London*, *Middlesex* and *Tork*, thirteen Shillings and Four-pence; and in *Cornwall*, *Devon* and *Somerset*, six Shillings and Eight-pence each; for every other Petition, one Shilling; and for the Justices Wages in *London* and *Middlesex*, ten Shillings.

F E E S to be paid by Sheriffs in the King's Remembrancer's Office, upon giving Security when he enters into his Office.

	l. s. d.		
T HE Stamp-Duty of the Recognizance	00	10	00
The Caption Fee before the Baron	00	08	08
The King's Remembrancer's Fee for the same, for the Counties of <i>Tork</i> and <i>Norfolk</i> , for each of them	00	13	04
To him for every County of <i>England</i> , except <i>Lancaster</i> and <i>Durham</i> , and the several Counties of <i>Wales</i> , which give no Security in the Exchequer	00	10	00
To the Attorney for making the Recognizance, attending the Baron, entring and enrolling the Recognizance, making the <i>Fiat</i> , and Duty for the same, and filing the Warrant of Attorney	00	18	00
Upon the Apposal of every Sheriff upon the Process returnable in <i>Easter</i> Term to the Deputy Remembrancer	00	09	00
To the Attorney that receives and files the Writs, and attends the Apposals of the Sheriffs	00	04	04
The like upon the Process returnable in <i>Michaelmas</i> Term	00	09	04
For making the Certificate when the Sheriff enters upon his Account of what Seisures are by him made upon the Process returned in that Office during this Year.	00	04	04

Treasurer's

Treasurer's Remembrancer's Office in the
Court of Exchequer.*FEES taken of Sheriffs in the said Office on
passing their Accounts by the Remembrancer.*

	1.	2.	3.
UPON a Baron's Warrant for respiteing a Sheriff's Apposal, or for a Day over to finish his Accounts	00	04	00
Upon the View of a Sheriff's Ac- counts in <i>Easter</i> and <i>Michael-</i> <i>mas</i> Term	00	06	08
Upon the Commission to swear a Sheriff in the County to ac- count	00	06	08
Upon examining and ruling a Sheriff's Petition of Allowance for the two Days granted <i>ex</i> <i>gratia Curie</i> for finishing his Account, and for filing his Affi- davit of Felons Goods	00	12	00
Upon examining and ruling any other Petition in a Sheriff's Ac- count, when any such happens	00	13	04
Upon a Record of Surplulage for the first five Pounds	00	06	08
For every other five Pounds	00	03	04
For filing any <i>Constat</i> , Warrant, or other <i>Exhibit</i>	00	01	00

By

By the sworn Clerks.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR making the View of a Sheriff's Account in <i>Easter</i> and <i>Michaelmas</i> Term, five Shillings each Term, <i>viz.</i>	00	10	00
For giving a Sheriff Notice termly, during his Year of Office, of any Information or Plaint against him, according to the Statute in that Case made and provided, and for attending his Apposals before the Barons, and in <i>Easter</i> and <i>Michaelmas</i> Term, twenty Shillings each Term, <i>viz.</i>	02	00	00
For drawing any Warrant to be signed by the Chancellor, or a Baron	00	06	08
For attending a Baron for his Hand thereto	00	03	04
For directing a Sheriff in his Business during the three Terms he is upon his Account, ten Shillings each Term, <i>viz.</i>	01	10	00
For making the Commission to swear a Sheriff in the Country to account pursuant to a Warrant from a Baron for that Purpose	00	10	00
For the Oath thereunto annexed	00	06	08
For a High-Sheriff's Warrant to be sworn to account, (when he comes in Person) and for attending his being sworn	01	00	00
For an Under-Sheriff's Warrant	00	03	04

For

	l.	s.	d.
For attending and putting in a Sheriff's Bills of Profers at the Receipt of Exchequer in <i>Cro. Cli. Pasche & Cro. Sci. Mich.</i> when his Year is ended, at his swearing to Account	01	06	08
For entering the two Days <i>ex gratia Curie</i>	00	06	08
For drawing a Sheriff's Oath touching Felons Goods	00	06	08
For a Copy thereof to transmit to the Pipe	00	03	04
For a Certificate of the Execution of a Process	00	06	08
For a Search in order to make such Certificate	00	03	04
For drawing any Petition in Parchment, and enrolling it	00	06	00
For enrolling a Sheriff's Bill of Allowance	00	13	04
For enrolling a Schedule <i>in Onere Constat</i> , or Warrant by the Roll	00	06	08
For a Record or Surplusage for the first five Pounds	00	06	08
For every other five Pounds	00	03	04
For copying any Seizure made by a Sheriff, <i>per Sheet</i>	00	00	08
For examining and signing the same	00	03	04
For a Writ of Assistance and Seal	00	10	00
For attending at <i>Westminster</i> to dismiss a Sheriff the Court, on finishing his Account	00	06	08

K

By

For

By the Filazer.

	l.	s.	d.
FOR entering the High-Sheriff's Commission, or Warrant <i>ad Computandum</i> on the Scroll of Accountants.	00	03	00
For an Under-Sheriff's Warrant, and any Warrant <i>ad recipiend' Brevia</i>	00	02	00
For the Sheriff's Tallies of Profers	00	02	00
For entering a Sheriff's Writ on the Bills	00	02	00
And when he comes <i>Post Diem</i> and Amerciaments are set by the Court, then for each Amerciament one Shilling, being usually six during his Year, viz.	00	06	00

When any Plea, Composition, Order, or the like, happens during a Sheriff's Account, through his Defaults or Contempts, he pays the same Fees that are paid by other Suitors.

There have been some small Fees, Time out of Mind, paid to the Under-Clerks, viz.

	l.	s.	d.
FOR writing a Warrant or Affidavit	00	01	00
On return of Process twice a Year, five Shillings, viz.	00	10	00
For ingrossing a Commission, and Oath annexed	00	05	00

As

As likewise to the Portubag, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR carrying any Writ to be sealed	00	00	06
For a Commission	00	01	00
A Sheriff pays him at each of his Apposals two Shillings, viz.	00	04	00
And for Postage of all his Business, during the Time he is upon his Account	00	05	00

A Particular of such Fees as are to be paid to the Sheriffs in the Office of Remembrancer of the First-Fruits and Tenths in his Majesty's Exchequer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR attending the Sheriff's Apposals at <i>Westminster</i> upon their returning of Writs issued for Arrears of First-Fruits, and for filing the same in <i>Easter</i> Term, each	00	04	04
The like for <i>Michaelmas</i> Term	00	04	04

F E E S to be received by the Foreign Apposer, his Deputy, or Chief Clerk, of all Sheriffs of Counties, Cities and Towns, at their Apposal upon the Summons of the green Wax, and for making out the Justices Wages when craved by the Sheriff.

Counties.	Apposal.			Justices Wages.		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
B edford	03	05	00	01	12	06
Berks	03	05	00	01	12	06
Bucks	03	05	00	01	12	06
Cambridge and Huntington }	03	05	00	01	12	06
Cornwal	06	05	00	01	12	06
Cumberland	03	05	00	01	12	06
Derby	03	18	04	01	12	06
Devon	07	05	00	01	12	06
Dorset	04	05	00	01	12	06
Effex	06	05	00	01	12	06
Gloucester	04	05	00	01	12	06
Hereford	03	05	00	01	12	06
Hertford	03	18	04	01	12	06
Kent	06	05	00	01	12	06
Leicester	03	05	00	01	12	06
Lincoln	06	05	00	01	12	06
London and Middlesex }	07	10	00	05	10	00
Monmouth	03	05	00	01	12	06
Norfolk	06	05	00	03	05	00
Northampton	05	05	00	01	12	06
Nottingham	03	18	04	01	12	06
Northumberland	01	15	00	01	12	06
Oxford	03	05	00	01	12	06
Rutland	01	15	00	00	00	00
Salop	04	05	00	01	12	06
Somerset	06	05	00	01	12	06

Southampton

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Counties.	Appofal.			Justices Wages.		
	l.	s.	d.	l.	s.	d.
Southampton	03	18	04	01	12	06
Stafford	03	05	00	01	12	06
Suffolk	07	05	00	03	05	00
Surrey	03	05	00	01	12	06
Suffex	03	05	00	01	12	06
Warwick	03	05	00	01	12	06
Westmorland	01	15	00	00	00	00
Worcester	03	05	00	01	12	06
Wilts	05	05	00	01	12	06
York	09	05	04	03	05	00

Cities.	Appofals.		
B ristol	00	17	06
Coventry	00	17	06
Canterbury	00	17	06
Exeter	01	12	06
Gloucester	00	17	06
Litchfield	00	15	19
Lincoln	00	15	10
Norwich	01	12	06
Worcester	00	17	06
York	00	17	06

Towns.	Appofals.		
	l.	s.	d.
K ingston upon Hull	00	15	19
Nottingham	00	17	06
Newcastle upon Tyne	00	17	06
Pool	00	14	02
Southampton	00	17	06

F E E S to be taken by the Clerk of the Extracts in his Majesty's Court of Exchequer, and by the sworn Clerk in that Office, of all Sheriffs accountable in the Exchequer upon their Apposals on the Summons of the green Wax.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
T O the Clerk of the Extracts for Northumberland and Westmorland, each	00	10	00
Of London and Middlesex	01	02	00
Of the County of Rutland	00	13	04
Of every other County, each	01	00	00
Of the City of Exon	00	10	00
Of every other City and Town, each	00	06	08
To the sworn Clerk for writing out the Summons twice every Year, and attending the Apposals.			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Of the County of Rutland	00	09	02
Of York	01	06	08
Of Surrey	01	13	04
Of Westmorland	00	16	08
Of the Counties of Hereford, Hertford, Oxford, Suffolk and Southampton, each	01	00	00
Of every other County	01	06	08
Of the Cities of Bristol, Litchfield, and Town of Pool, each	00	05	10
Of the City of Exeter	00	10	00
Of every other City and Town, each	00	08	04
The Fee due to the Chancellor of the Exchequer, his Secretary, and Clerk, for passing a Sheriff's Allowance, to be	00	15	00

F E E S

FEES to be taken by the Cursitor-Baron, and his Clerk, of the several Sheriffs of England.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
T O the Baron for swearing to their Account, and signing their Warrant	00	16	08
To his Clerk	00	04	00
To the Baron at their Apposals	01	00	00
To his Clerk	00	07	06
To the Baron at their casting out of Court	01	00	00
To his Clerk	00	07	06
Sheriffs of <i>London</i> and <i>Middlesex</i> , and Sheriffs of the County of <i>Tork</i> , pay double Fees; and the Sheriffs of <i>Sussex</i> , <i>Surrey</i> , <i>Rutland</i> and <i>Westmorland</i> , pay half Fees.			

FEES certain and casual to be paid by the Sheriffs to the Marshals of his Majesty's Court of Exchequer, granted to them by Patent under the Great Seal without Salary.

Easter Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
A LL Sheriffs of the Counties of <i>England</i> come then to be apposed on their Writs and Pro- cess before the Barons, and pay the said Marshals (except <i>Rut-</i> <i>land</i> and <i>Torkshire</i>)	00	15	10
<i>Rutland</i> to pay half that Fee, viz.	00	07	11
<i>Torkshire</i> double	01	11	08

Michaelmas Term.

The same Sheriffs are apposed again on the same Writ and Process, and to pay their Fees as above.

Easter Term.

Sheriffs of the Cities and Towns, and Deputies of the Cinque Ports, each of them to pay severally upon their Apposals then, as followeth, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
L Incoln, Canterbury, Pool, Gloucester, Wigorn', Nottingham, Coventry, Southampton, Litchfield, and Deputy of the Cinque Ports	00	08	08
York, Norwich, Exeter, New-castle, Hull	00	13	04
Bristol City	00	10	06

Michaelmas Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
T HE Sheriffs of Cities and Towns above, apposed then, are to pay the same Fees as paid in <i>Easter</i> Term, and when sworn to Account, are to pay more	00	03	00
Bailiffs of Liberties sworn to Account are to pay each	00	00	08
Bristol Escheator is to pay	00	03	04

Michaelmas

Michaelmas Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
S heriffs of Counties prefixed that Term to be sworn, and to take their Accounts in Charge before the Curfitor-Baron, on the Summons of the Pipe, and before the Foreign Apposer upon the green Wax, viz. <i>Essex, Hertford, Kent, Cambridge, Huntingdon, Northampton, Lincoln, Stafford, Wigorn, Wilts, Cornwall, Salop, Berks and Bucks</i> , are to pay each			
<i>Rutland</i> is to pay half that Fee	00	14	07
<i>London and Middlesex</i> is to pay his Fees for a whole Year	05	12	00
<i>London Gauger</i> then sworn in Court is to pay	00	08	08

Hillary Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
S heriffs of Counties sworn and apposed before the Curfitor-Baron and Foreign Apposer, as in <i>Michaelmas Term</i> , viz. <i>Surrey, Sussex, Oxon, Berks, Norfolk, Suffolk, Hereford, Dorset, Monmouth, Somerset, Derby, Nottingham, Devon, Gloucester, Warwick, Southampton and Leicester</i> , to pay each			
<i>York</i> pays double	02	18	04

Easter

Easter Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Sheriffs of <i>Cumberland</i> and <i>Northumberland</i> , then prefixed and apposed on the Summons of the Pipe and green Wax, before the Curfitor-Baron and Foreign Apposer, to pay each	01	09	02
<i>Westmorland</i> then to pay his Fees for the whole Year	02	06	08
<i>Lancashire</i> for the whole Year	03	10	00
<i>Cheshire</i> for the whole Year	03	06	08
All Sheriffs discharged by Proclamation in the Court, except <i>York</i>	00	15	10
<i>York</i> is to pay	01	11	08

Casual FEES.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Sheriffs attached by Order of Court or Warrant	01	13	04
Sheriffs in Custody <i>per Diem</i> , until discharged	00	06	08

If the Marshal rides into the Country, Sixpence *per* Mile forwards, and the same backwards, towards his Charges from the Sheriff on whose Account he goes.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Every Sheriff that hath further Time given him by Order of Court, or Warrant to pass his Account, or to be apposed, to pay	00	06	08

The FEES to be taken by the four Ushers of his Majesty's Court of Exchequer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Of every High-Sheriff when he enters on Recognizance in the Exchequer	00	08	00
Of every Sheriff of a County sworn to answer upon his two Appofals on the King's Remembrancer, Treasurer's Remembrancer, and First-Fruits Process, for each the said Appofals	00	08	00
Of every Sheriff of a City, &c. on each of his said two Appofals	00	04	00
Of every Sheriff of a County sworn to his Account in Court, or elsewhere, and on his Appofal on the Pipe Process before the Curfitor-Baron	00	18	06
Of every Sheriff of a City, &c. on the like Appofal	00	04	00
Of every Sheriff of a County at his casting out of Court, or finishing his Account	00	08	00
<i>London, Middlesex and Yorkshire, to pay double.</i>			

FEES

F E E S to be taken by the Court-Keeper of his Majesty's Court of Exchequer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Of every High-Sheriff when he enters on Recognizance in the Exchequer	00	02	00
Of every Sheriff of a County-Town to answer upon his two Apposals on the King's Remembrancer, Treasurer's Remembrancer, and First-Fruits Process, for each of the said Apposals	00	02	00
Of every Sheriff of a City, &c. on each of the said two Apposals	00	01	00
Of every Sheriff of a County sworn to his Account in Court, or elsewhere, and on his Apposal upon the Pipe Process, before the Curfitor-Baron	00	03	00
Of every Sheriff of a City, &c. on the like Apposal	00	01	00
Of every Sheriff of a County upon his Apposal on the Summons of green Wax, before the Foreign Apposer and Clerk of the Exchequer	00	02	00
If apposed out of Term	00	02	06
Of every Sheriff of a City, &c. on the like Apposal	00	01	00
Of every Sheriff of a County on his casting out of Court, or finishing his Accounts	00	02	00
<i>London, Middlesex and York, to pay double.</i>			

F E E S

*F E E S to be received by the Messenger of the
said Court, viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
O F every Sheriff of a County sworn to answer upon his two Apposals on the King's Remem- brancer, Treasurer's Remem- brancer, and First-Fruits Process, for each of the said Apposals	00	06	08
Of every Sheriff of a City for each of the said two Apposals	00	03	04
<i>London, Middlesex and York, to pay double.</i>			

*F E E S to be received by the Tipstaff in the
said Court.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
O F every High-Sheriff when he enters on Recognizance in the Exchequer	00	02	00
Of every Sheriff of a County sworn to answer upon his two Apposals upon the King's Remembrancer, Treasurer's Remembrancer, and First-Fruits Process, for each of the said Apposals	00	02	00
Of every Sheriff of a City, &c. sworn to answer the like Apposals	00	01	00
Of every Sheriff of a County sworn to his Account in Court, or else- where, and on his Apposal on the Pipe Process before the Cursitor- Baron	00	03	00
Of every Sheriff of a City, &c. on his Apposal on the Pipe Process before the Cursitor-Baron	00	01	00
Of every Sheriff of a County at his casting out of Court, and fi- nishing his Account	00	02	00
<i>London, Middlesex and York, to pay double.</i>			

F E E S

F E E S and Allowances to be paid to the Auditors of Exchequer, for making up and passing the under-mentioned Sheriffs Accounts, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR inrolling a Sheriff's Patent, filing the several Certificates, drawing and ingrossing the Account, and for the <i>Quietus</i> of the Sheriff of <i>Cheshire</i> and <i>Lancashire</i> , the Fees for each County to be	20	00	00
For the County Palatine of <i>Durham</i> , according to ancient Custom	09	06	08
For casting out of Sheriffs in open Court, except <i>London</i> and <i>Middlesex</i> , <i>Tork</i> and <i>Lincoln</i> , each County	00	10	00
For <i>London</i> , <i>Middlesex</i> , <i>Tork</i> and <i>Lincoln</i> , each County	01	00	00

F E E S to be paid by the Sheriffs of *Wales* to the Auditor of *Wales* and *Cheshire*, for the several Sheriffs of *Wales*.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR every old Seizure charged in the Sheriff's Account	00	01	00
For every new Seizure charged in the Sheriff's Account	00	02	00
For inrolling a Sheriff's Patent, filing the several Certificates, drawing and ingrossing the Account, and for the <i>Quietus est</i> for each County	08	18	04

The

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The FEES due to the Receiver of North and South Wales.

	l.	s.	d.
FOR every Sheriff upon passing his Accounts at the Audit for signing his Accounts, and entering in the Revenue-Book	02	13	04

For the Sheriffs of Cheshire.

	l.	s.	d.
FOR inrolling the Sheriff's Patent, filing the several Certificates, drawing and ingrossing the Account, and for the <i>Quietus est</i>	20	00	00

CHAP. VI.

Anno Tertio Georgii Regis, c. 16.

An Act for the better enabling Sheriffs to sue out their Patents, and pass their Accounts.

WHEREAS it is not reasonable that the Sheriffs of this Kingdom, who are obliged to take upon them that troublesome and expensive Office for the Service of their Country, should pay those large Fees that are demanded of them, and of right belong to the Officers and Clerks of the Chancery, Exchequer, and Pipe, for passing their Patents and Accounts, and obtaining their *Quietus's*: And whereas it would be unreasonable to take their due Fees from the Officers and Clerks, or to expect that they should do the Duty of their respective

pective Offices without a reasonable Reward for their Labour: And whereas the whole Expence of passing the Patents and the Accounts of the several Sneriffs herein after mentioned, amounts to four thousand Pounds: Therefore to the End that the Sheriffs may be eased, and Justice done to the said Officers and Clerks, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-ninth Day of *September* in the Year of our Lord One thousand seven hundred and seventeen, the yearly Sum of four thousand Pounds shall be set apart at the Receipt of the Exchequer out of such Fund as by any Act of this Session of Parliament shall be charged with the said yearly Sum, and in such Manner as shall be thereby appointed, for the Uses and Purposes hereafter mentioned.

And be it further enacted by the Authority aforesaid, That there shall be yearly and every Year paid out of the Monies which shall from Time to Time be so set apart upon the first Day of *Michaelmas* Term, to the several Sheriffs for the Time being, of the several Counties herein after mentioned, the several and respective Sums herein after expressed, to enable them respectively to bear the Expences of the respective Letters Patent for their Offices, and to pass their respective Accounts, and to obtain their respective *Quietus's*; the said yearly Sums to be received without any Account or Imprest whatsoever to be set upon them, or any of them, and without paying any Fees or Charges for the same, or any Part thereof; that is to say,

TO the respective Sheriffs which shall be appointed for the County of *Bedford*, ninety-three Pounds and six Shillings.

For the County of *Berks*, ninety-six Pounds.

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For the County of *Bucks*, ninety-six Pounds.

For the Counties of *Cambridge* and *Huntington*, ninety-five Pounds and ten Shillings.

For the County of *Cheeshire*, sixty-two Pounds and five Shillings.

For the County of *Cornwall*, one hundred and two Pounds and sixteen Shillings.

For the County of *Cumberland*, ninety Pounds and two Shillings.

For the County of *Derby*, ninety-three Pounds and nineteen Shillings.

For the County of *Devon*, one hundred and six Pounds nine Shillings.

For the County of *Dorset*, one hundred and one Pounds six Shillings.

For the County of *Essex*, one hundred and eight Pounds ten Shillings.

For the County of *Gloucester*, ninety-eight Pounds and ten Shillings.

For the County of *Hereford*, ninety-four Pounds and six Shillings.

For the County of *Hertford*, ninety-three Pounds.

For the County of *Kent*, one hundred and eight Pounds ten Shillings.

For the County of *Lancaster*, sixty-seven Pounds and seven Shillings.

For the County of *Leicester*, ninety-four Pounds and six Shillings.

For the County of *Lincoln*, one hundred and one Pounds and three Shillings.

For the County of *Middlesex*, one hundred and nineteen Pounds and three Shillings.

For the County of *Monmouth*, eighty-nine Pounds and three Shillings.

For the County of *Norfolk*, one hundred and one Pounds fifteen Shillings.

For the County of *Northampton*, ninety-six Pounds.

For the County of *Northumberland*, ninety-one Pounds.

L

For

For the County of *Nottingham*, ninety-five Pounds and thirteen Shillings.

For the County of *Oxon*, ninety-seven Pounds and seven Shillings.

For the County of *Rutland*, sixty-nine Pounds and eleven Shillings.

For the County of *Salop*, ninety-eight Pounds and three Shillings.

For the County of *Somerset*, one hundred and twelve Pounds nineteen Shillings.

For the County of *Southampton*, one hundred and one Pounds three Shillings.

For the County of *Stafford*, ninety-five Pounds and ten Shillings.

For the County of *Suffolk*, one hundred and two Pounds twelve Shillings.

For the County of *Surrey*, ninety Pounds and two Shillings.

For the County of *Sussex*, ninety Pounds and five Shillings.

For the County of *Warwick*, ninety-three Pounds and ten Shillings.

For the County of *Wilts*, one hundred and four Pounds and ten Shillings.

For the County of *Worcester*, ninety-eight Pounds and three Shillings.

For the County of *York*, one hundred and fifty Pounds.

For the County of *Anglesea*, thirty Pounds.

For the County of *Brecon*, thirty Pounds.

For the County of *Cardigan*, thirty Pounds.

For the County of *Carmarthen*, thirty Pounds.

For the County of *Carnarvon*, thirty Pounds.

For the County of *Denbigh*, thirty Pounds.

For the County of *Flint*, thirty Pounds.

For the County of *Glamorgan*, thirty Pounds.

For the County of *Merioneth*, thirty Pounds.

For the County of *Montgomery*, thirty Pounds.

For the County of *Pembroke*, thirty Pounds.

For the County of *Radnor*, thirty Pounds.

And to the Sheriff of *Westmorland*, for the Time being, forty Pounds and six Shillings.

C H A P.

C H A P. VII.

Observations on the said Statutes concerning the Office of Sheriffs, &c.

FOR the better understanding of the precedent Statutes *tertio Georgii, &c.* it may be necessary to observe, *First*, That the Office of Sheriff was originally eligible by the Country, that afterwards it became grantable to the Crown, *ad libitum*, and the Consequences thereof; that King *Ed. 1.* granted, or rather restored to the People Part of their Right in electing their Sheriffs; but that proving inconvenient, his Successor established the present Method of their Nomination, by the Lord Chancellor, Treasurer, Judges, &c.

Sheriffs originally eligible.

And *Secondly*, Shew what various Alterations and Regulations have been made of the Office and Authority of Sheriffs by several successive Parliaments; by all which it will appear, a constant Regard (except in violent Times) was had to the Ease and Welfare of the People.

Now in Proof of these Particulars it will appear, beyond Dispute, That in the Time of the Saxons there were Sheriffs in this Kingdom: That these Sheriffs had the whole Civil Government and Judicial Authority in their Counties, except in such Cases only as belonged to the Crown, or were exempted by particular Laws; and that they had their Authority in those Times from the Free Election of the People in their *Folkmoetes*, or *County-Courts*. See for this *Spelman's Glossary*, *verbis Folkmote*, *Aldermanus* and *Gerassier*. *Lambard's Præf. ad Leg. Sax.* *Selden's Titles of Honour* 610, 611. *Selden's Analekton* 83, 85. 9 Co. 49. b. *Tkuanus's History*, *Lib. 43. fol. 894 to 906, &c.*

Temp. Saxons.

Observations on the Statutes Ch. 7.

And that such Sheriffs there were long before the Normans Entrance, *vide Selden's Janus* 53, 73. *Titles of Honour* 226, 233, 255. *Grand Custumier*, fo. 9. *Mirror* 9. *Camden's Scotland*, fo. 8, &c. 1 *Roll. Rep.* 237. *Co. Lit.* 168. *Prefa. ad.* 9 *Co.* and 9 *Co.* 49, 92.

How granted
by W. 1.

But it is evident *William* the First chang'd their original Constitution, and assum'd a Power of granting Earldoms, or the Government of Counties (which then included the Office of Sheriff) to such Persons, and for such Terms of Time as he thought fit, *viz.* either in Fee, for Life, or Term of Years, &c. And this sometimes out of Favour or Reward of Services, but more frequently in Consideration of Money paid, and yielding the Annual Rents and Profits into his Exchequer. *Vide Mr. Maddox's History of the Exchequer*, and *Gervaf. Tilbur.* 69, 113.

Bought for
Money, &c.

Note.

And that this was so, further appears from that remarkable Instance mentioned by *Mat. Paris*, fo. 12, 13. *sub Anno* 1075. *i. e.* 7 & 8 W. 1. About this Time (says he) *Walter* Bishop of *Durham*, contrary to his Episcopal Office, meddling with secular Matters, having bought of W. 1. the Earldom of *Northumberland*, (*Et Vicecomitis agens Vices laicali foro, &c.*) and in holding his County-Courts, or Sheriffs Torns, having insolently extorted infinite Sums of Money from all the People of that Province, *tam Nobilibus quam Servis*: And the People, by the continual Exactions of the Bishop, and his Ministers, being reduced to extreme Want, were now desperately enraged against him, and therefore unanimously resolv'd to come privately arm'd to the County-Court to repel those Injuries; and appearing there accordingly, boldly demanded a Redress of their Injuries; to whom the Bishop, *nimis creduliter*, answer'd, That he would not hear their Complaints, nor do them Justice therein, except they would before-hand lay him down 40 *l. Optime Monetæ*; whereupon

County-
Courts.

one

one of them (*pro omnibus Loquens*) desired Leave of the Bishop to consult with the Rest, in order to answer the Bishop's Demands; which being granted, and they a little withdrawn, one of them suddenly cries out, *Patria Lingua*, short Red, good Red, flea yea the Bishop, i. e. short Counsel is good Counsel, kill ye the Bishop; whereupon they all rushing into Court kill'd the Bishop, and a Hundred of his Men, near the River *Tine*, *ubi placita letifera ab Episcopo tenebantur*.

These were *Englishmen* that claim'd their antient Rights, and on that Answer of the Bishop perpetrated this Fact; and it is a Wonder that this *parti-per-pale* Bishop could not be forewarn'd, by the like Instance that happen'd to the precedent Sheriff but few Years before; for *Anno 1068*, which was but the next Year after the *Normans* Arrival, *Rex Willielmus Roberto Comi dedit Northumbria Comitatum, cui statim homines illius Regionis adversantes ipsum cum Nongentis Viris peremerunt. Mat. Paris, fo. 7.*

And that *W. 2.* followed, or rather exceeded *W. 2.* his Father in his Sale of Earldoms, Baronages and Bailiwicks, is declar'd by all the Historians of those Times.

Indeed *Henry* the First somewhat relaxed *Hen. 1.* those Severities by restoring the Confessor's Laws in Part, as appears by his Charter in *Mat. Par. 74, 75.* But still he, and divers of his Successors (*viz. King Stephen, Hen. 2. Rich. 1. &c.*) granted the Sheriffalties or Government of Counties in Fee, or for Life, or Years, as they thought fit; and often separated Honours, Manors, Hundreds, Wapentakes, &c. from the *Hen. 2.* Jurisdiction of the Sheriff, and these were very improperly called *Liberties. Vide 14 E. 3. cap. 9.*

And hence it is that we find mention of divers Sheriffalties granted, or held in Fee, or Fee, &c. for Life, &c. among the antient Pipe-Rolls, *Temp. Hen. 2. Rich. 1. Johannis, Hen. 3. &c. Rich. 1.* See also Mr. *Vincen's* Extracts, *Britton 126. b. Johannis.*

Observations on the Statutes Ch. 7.

Rot. Pat. 14 E. 1. M. 9. 1 E. 3. Fitz. Enterpleader 15. Camden's Scotland 17, &c. And the Sheriffalty of *Westmorland* is held in Fee to this Day.

Hen. 3.

But in the Reign of *Hen. 3.* some Alteration seems to have been made, and that King did not take upon him so absolutely to dispose of these Offices. For *Rot. Pat. 42 H. 3. m.*—

Election.

A Sheriff is said to have been made *per Assensum Consilii*. And I have an Extract from a Leiger Book, formerly belonging to the Abby of *Peter and Paul* near *Shrewsbury*, that mentions an Agreement to have been made 25 *Hen. 3.* between the Men of that County, of the one Part, and *Dominum J. Extraneum*, their then elected Sheriff, and *Nicholas de Willelgh* his Under-Sheriff, of the other Part: So that it seems, about this Time, the People had at least in some Counties regain'd their antient Right of choosing their own Sheriffs.

But this Right was more apparently restor'd by the Stat. call'd, *Articuli super Chartas*, made 28 *E. 1.* who was *Henry the Third's* Successor, for thereby it is enacted, *That the People of every County shall have the Election of their Sheriff, where the Sheriffalty is not of Fee, if they will.* And see my Lord *Coke's* Notes on this Statute, 2 *Inst.* 558, 559. That this Act only restor'd the Freeholders Right.

cap. 13.

See also the same Stat. *cap. 13.* (2 *Inst.* 566.) which enacts, That the Commons of every County shall chuse such Sheriffs as shall not surcharge them, nor put any Officer into Authority for Rewards or Bribes. *Vide infra.*

Stat. 9 E. 2.

But these popular Elections being much influenced by great Men of opposite Parties, begat great Contentions and Tumults; and therefore to avoid these and other Inconveniencies, about fifteen Years afterwards, viz. 9 *E. 2.* the Statute *de Vicecomitibus* was made, whereby it is enacted, 1. That Sheriffs shall be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and

and Justices. 2. That Sheriffs shall have Lands in the County sufficient to answer the King and his People. (*Vide 4 E. 3. cap. 9. and 5 E. 3. cap. 4. accord.*) 3. That no Steward or Bailiff of any great Lord shall be Sheriff. 4. That Hundreds, &c. be leas'd on reasonable Rents, *To the End they may not extort on the People.* 5. That no Sheriff, &c. let his Office to Farm, or otherwise. And 6. It directs how Writs shall be executed, for the Benefit and Ease of the People.

And because that Statute extended not to Sherifalties in Fee, therefore by a Statute made 2 E. 3. cap. 4. the same is confirm'd, and farther enacted, That Sheriffs, and Bailiffs of Fee, shall cause their Counties, &c. to be kept by such as have (sufficient) Lands therein. And cap. 12. all Hundreds and Wapentakes (formerly separated *ut supra*) are inseparably united to their respective Counties. And by cap. 15. Sheriffs shall let their Hundreds and Wapentakes for the old Farm, and not above; and Justices to be assign'd to inquire and punish them if found Guilty herein. And *Note*, Both these Statutes of 9 E. 2. and 2 E. 3. were re-enacted with several Additions by 14 E. 3. cap. 9. which see at large.

And to remedy the Inconvenience of Sheriffs continuing long in their Office, some having been granted in Fee, others for Life, and others for long Term of Years, (*Vide Rot. Parl. 16 E. 1. m. 15. And Rot. Parl. 8 E. 2. m. 19. one made Sheriff for eight Years*) it was enacted, 42 E. 3. cap. 9. That no Sheriff, or Under-Sheriff, &c. should continue in Office above a Year; which Statute, as also the Statute 14 E. 3. cap. 9. are confirm'd 13 Hen. 6. cap. 8. and enforced with great Penalties.

Also by 1 Rich. 2. cap. 11. it is provided, That none who had been Sheriff for one whole Year should be Sheriff again within three Years after, *If there be others sufficient in the County to*

Observations on the Statutes Ch. 7.

answer the King and his People. By which last Words it is apparent, that Statute was not made in Favour of Sheriffs (for then they got Money by their Offices) but for the Ease and Benefit of the People, and to avoid Oppression.

Nota.

And it is observable, That some of the Articles of Impeachment against this King, *viz. Rich. 2.* (in Consequence of which he lost his Crown and his Life) were for suffering Sheriffs to continue longer in their Office than a Year, and for placing unfit Persons to be Sheriffs, &c. *Vide Cotton's Records 387.* And among those against the Duke of *Suffolk, 28 Hen. 6.* one Article is, For procuring Persons of his Confederacy to be made Sheriffs. *Vide Cotton, ibid. 643.*

Hen. 5. c. 4.

Note also, by Statute 1 Hen. 5. cap. 4. They who have been Sheriffs Bailiffs for one Year, shall not bear that Office by three Years next following, except in Sheriffwicks inheritable; and no Under-Sheriff, Sheriff's Clerk, Receiver, or Sheriff's Bailiff, shall be Attorney in any of the King's Courts, so long as he bears such Office under the Sheriff.

Extortion,
vide prox.
pag.

Now that all these, and divers subsequent Statutes, were made for the Ease and Advantage of the People, appears farther from the many Complaints, *Temp. E. 1. and E. 2.* of Exorbitances committed by Sheriffs, under Colour of levying the *Proficua Comitatus*, &c. For Sheriffalties having been granted under high Fines, &c. the Sheriff was also obliged to answer the *tota proficua Comitatus* into the King's Exchequer, tho' great Part of it was often illeivable, nay, sometimes granted away to others; which occasion'd Sheriffs to bestow Offices, and administer Justice, for Bribes and Rewards, to extort Money by unjust Means, and to live at Discretion on the Country People. (*Vide Rot. Parl. 16 E. 1. m. 15.* one made Sheriff for Life. *Ita quod Regi respondeat tota proficua Comitatus sicut alii Vicecomites, &c.*) And therefore a Statute was made *27 Ed. 1. c. 2. 27 E. 1. cap. 2.* commonly called *de Finibus Levatis,*

Kel. 192, 194.

Ch. 7. concerning Sheriffs.

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viz., restraining Sheriffs from levying any Issues, &c. but what they had Warrant for.

And by *Articul. super Chartas*, cap. 13. such 28 Ed. 1. c. 13. were to be chosen Sheriffs as would not charge or burden the People, nor put Officers in Authority for Rewards and Bribes, nor lodge too often in one Place, nor yet with poor Persons, nor Men of Religion.

But these Statutes did not effectually remedy the Abuses of Sheriffs; for after this I find innumerable Instances of Complaints and Petitions in Parliament to remedy the same, *Temp. E. 3. & R. 2.* especially the latter. *Vide Cotton's Records*, *Temp. E. 3.* 80, 109, 112, 134, 138, 149. *Temp. R. 2.* 161, 163, 170, 178, 179, 191, 192, 149, 161, 163, 202, 301, 311, 318, 324, 333, 338, 344, 348, 356, 358, 359.

'Tis true *Ed. 3.* being a warlike Prince escap'd Ed. 3. the Mischief; but *Richard's* Reign proving idle Rich. 2. and luxurious, and that producing Want, necessitated him to raise Money by indirect Methods, particularly the Sale of Sheriffalties, and other Offices, which proved his Ruin; as before is hinted.

But *Hen. 4.* having acquir'd the Crown by Hen. 4. the Election of the People, could not but observe the fatal Error of his Predecessor, and therefore provided against the like Mischief by an Act of Parliament, in the very Entrance of his Reign; which, with a memorable Preamble, runs thus, *viz.*

"Whereas the Commons, in their Petition, Stat. 1 Hen. 4.
 "have shewn, in this same Parliament, how c. 11.
 "the Sheriffs of Counties, within the Realm,
 "are charged with the antient Ferm of the
 "same Counties, whereas a great Part of the
 "Profits is given severally to Lords, and others,
 "the King's liege People, so that the same Sheriffs cannot pay their Ferm without doing Ex-
 "tortion in the said Counties, in great Oppression
 "and Hindrance as well of the said Sheriffs, as
 "of

Observations on the Statutes Ch. 7.

" of the Inhabitants of the said Counties. There-
 " fore enacted, That Sheriffs shall Account, and
 " have Allowance by their Oath of the Issues of
 " their Counties. And if any Sheriff, from
 " henceforth, do any Extortion to the People,
 " and be thereof attainted, he shall be duly pu-
 " nished for the same at the King's Will.

Petitions and
 Answers in
 Parliament.

But notwithstanding that Act, I find 2 Hen. 4. Cotton 410. the Commons pray, That all Sheriffs being overcharged be eased thereof; yet have only this Answer, viz. Such Sheriffs as have Cause to complain, shall have Remedy before the Council.

And in 4 Hen. 4. they pray, That all Sheriffs, upon their Oaths, may be discharged in the Exchequer. Answer: Such as be grieved shall find Remedy at the Hands of the Council and Barons of the Exchequer.

But 8 Hen. 4. at the Request of the Commons the King grants, That the Statute made the first of his Reign for discharge of Sheriffs, should be kept. And because the same sufficeth not for their Discharges, the King grants, That Lords of the Council should have Power by next Parliament to take Order therein.

Yet in 9 Hen. 4. and also 11 Hen. 4. they again Petition, That all Sheriffs, upon their Oaths, may be allowed in the Exchequer. Answer: The King's Council, upon every particular Declaration, have Power to take Order therein.

And in 13 Hen. 4. certain Counties, by particular Complaint, pray the King, That their Sheriffs be not surcharged with more than they can levy. Answer: Let every Sheriff, being grieved, shew the same to the King, who will shew such Pardon as shall be seen.

And the like Petitions and Answers are 1 H. 5. and 3 H. 5.

Stat. 4 Hen. 5.
 c. 2.

But 4 H. 5. cap. 2. enacts, That Sheriffs shall have Allowance upon their Accounts, by their Oaths, of Things casual, (as of Estreats) that be

be not in Farm or Demand; but for all Things that run in yearly Farms or Demands, they shall be charged to the King as in Times past.

Yet after this, in 2 *Hen. 6.* a Motion was made for an Allowance to Sheriffs, but of no great Force.

And in 8 *Hen. 6.* another Motion, That Sheriffs, and such other Officers, be not impeach'd by Process out of the Exchequer for Things not leviable. *Answer*: The King's Council shall have Power to determine the same. Nor do I find any Thing further done touching this Matter till the Stat. 23 *H. 6. cap. 8.* before mentioned. 23 *Hen. 6. c. 8.*
Quod vide.

After which follow'd the Stat. 23 *Hen. 6. cap. 10.* which further restrains Sheriffs from letting their Bailiwicks to Farm, and directs them in the Returns of Jurors taking Bail, returning Writs, &c. as also divers other Statutes touching the Execution of their Office. *Temp. E. 4. H. 7. & H. 8.* But nothing is enacted touching Sheriffs Accounts, till the Stat. 34 *Hen. 8. cap. 16.* which particularly directs how the same should be pass'd and allow'd. But that being but a temporary Act was discontinued, and by 2 & 3 *E. 6. cap. 6.* 2 & 3 *E. 6.* it is expressly vacated, and a new Method of Accounting is thereby establish'd, touching the Manner whereof. *Vide Sir M. Hale's Treatise of Sheriffs Accounts, page 79. ad pag. 110.*

The next Statute I find under this Head is that of 21 *Jac. 1. cap. 5.* That a *Quietus est* shall be a sufficient Discharge for a Sheriff, unless he be questioned within four Years after: And see the Penalty of forty Pounds, and Costs and Damages, if any Process be sent against him contrary to that Act. 21 *Jac. 1. c. 5.*

After this follows that Act of 13 & 14 *Car. 2. cap. 21.* for preventing the unnecessary Charges of Sheriffs, and for Ease in passing their Accounts; but that Act being only to continue to the End of the first Session of the then next Parliament, is long since expired. 13 & 14 *Car. 2. c. 21.*

And

And tho' in the Reigns of King *William* and Queen *Anne* divers Endeavours were made to have an Act pass'd for the like Purpose, yet it being oppos'd by certain Men who conceived their Interest too nearly touch'd thereby, these Endeavours were unsuccessful, till the Plan of the Act *tertio Georgii* was propos'd, which by regulating the Exchequer Fees, as well as the Office and Duty of the Sheriff, will ('tis hoped) render that Act more beneficial to the Publick than any of the former.

Here it might seem proper to have considered the particular Clauses of the said Acts, by shewing how far the Law is alter'd or improv'd thereby. But *Cymbius aurem vellit, &c.* — I have already run beyond my Bounds, and shall only conclude with the following judicial Opinions touching the Sheriff's Office, extracted out of the late Serjeant *Salkeld's Reports*, viz.

1. A Sheriff is the Officer of *B. R.* in the same Manner as a Constable is to the Justices of Peace. *Salk.* 175.

Bail.

2. He may take a Bail-Bond on an Attachment for a Contempt, but the Plaintiff may refuse to accept it. *Ibid.* 608.

3. And if he takes insufficient Bail for an Appearance, and the Plaintiff refuses it, he is liable to an Action, and may be also amerced. *Salk.* 99.

4. But in either Case if the Plaintiff take an Assignment of the Bail-Bond (tho' insufficient) the Sheriff is not to be amerced. *Ibid.*

Return.

5. A *Sci. Fa.* against Bail must lie in the Sheriff's Hands a convenient Time before return'd, &c. *Ibid.* 599.

6. Where 'tis necessary to return a *Fi. Fa.* and where not. *Vide ibid.* 318.

Execution.

7. Execution on a *Fi. Fa.* in Life of the Testator gives a Right to the Executor. 12.

8. Note; A *Fi. Fa.* abates not by the Plaintiff's Death. 322.

9. Two

9. Two *Fi. Facias*'s delivered to the Sheriff the same Day, who executes the last first, the Execution is good; but the Sheriff is liable to the Plaintiff in the first. 320.

10. The Sheriff that begins an Execution shall *Note*. end it, tho' his Office expires. 323.

11. A Seizure of Goods in Execution, deveys the Defendant's Property therein, and discharges his Person. *Ibid*.

12. One taken in a *Capias Utlag.* after Judgment, after the Year, is in Execution at the Party's Suit, *sans* Prayer. 319.

13. A Writ of Error is a *Superseas* to an Execution (not begun, &c.) as soon as allowed, *sans* Notice. 321.

14. What is a Disturbance of Execution on an *Hab. fac. possessionem*, &c. 321.

15. To what Executions the Statute of 29 *El. cap. 4.* extends, and what not. *Vide bis* 331.

16. *Note*; Execution may be on Affirmance of Convictions, &c. either by *Levari Fa. Fi.* or *Ca. Sa.* 369, 379.

17. An Under-Sheriff can't refuse to execute *Fees*. Process till he has his Fee; and if he does, may be indicted for Extortion. 330, 331.

18. But if he executes a Writ, he shall have his Fees tho' the Writ be erroneous. *Salk.* 332.

19. And Debt lies for his Fees for executing an *Elegit*, as well as an Extent. 333.

20. Also on a *Ca. Sa.* he shall have his Fees for the whole Debt. *Quere*, If on *Elegits*. 331.

21. The Statute of 29 *Eliz. cap. 4.* for Sheriffs Fees, does not extend to Executions out of inferior Courts. 331.

22. And 'twas then also held, It did not extend to Executions on Statutes, Recognizances, &c. because the Judgment in those Cases was not *in invitum*. But see now the Stat. *tertio Georgii, cap. 15. Sect. 18. ante p. 107.*

C H A P. VIII.

Of Parliamentary Elections.

IT hath been thought proper in this Edition briefly, but clearly to give the Reader a View of the Duty of Sheriffs concerning Elections of Members of Parliament; the rather because other Treatises concerning this Office are silent on this Head. I shall cite the Statutes which enact, that *Elections ought to be free*, or other general Learning; because every Gentleman who is fit to serve in that great Trust of Sheriff, is able to suggest to himself the Danger which corrupt Elections or partial arbitrary Returns must bring to all the Rights and Liberties of this free People, and of their latest Posterity. It shall suffice therefore to point out the Acts of Parliament, and their principal Heads, which direct the Sheriff in the Execution of this Branch of his Office.

§. 1. By 5 *Rich. 2. cap. 4.* Negligence in returning the Writ, or leaving out any City or Borough, is punishable by Amerciament.

§. 2. By 7 *Hen. 4. cap. 15.* For Election of Knights, he is at the next County-Court after Receipt of the Writ to proclaim in full Court the Day and Place of the Parliament, and proceed to Election; and tack an Indenture to the Writ, with the Names of the Elected, under the Seals of the Sheriff and Electors. And by 11 *Hen. 4. cap. 1.* he incurs a Penalty of One hundred Pounds to the King, upon Inquest found before Judges of Assize of his making any Return contrary to 7 *Hen. 4. c. 15.* And by 6 *Hen. 6. cap. 4.* he may traverse such Inquest.

§. 3. By 8 *Hen. 6. cap. 7.* Electors of Knights are to have forty Shillings a Year, to be sworn by the Sheriff. This is to be inquired of by

Ch.8. §.6. Of Parliamentary Elections.

159

Judges of Assize: The Penalty One hundred Pounds to the King, and a Year's Imprisonment.

By 23 *Hen. 6. cap. 15.* He is to make Precepts to Mayors, &c. within his County, reciting the Writ, and commanding them to chuse by Citizens, &c. and the Mayor, &c. is to return the Precept by Indenture with the Sheriff, which the Sheriff is to return. Offences against this, or any former Statute, liable to the Penalty in 8 *Hen. 6.* and 100*l.* with Costs, to the Person elected, by Action of Debt; and Mayors, &c. in like Case forty Pounds and Costs. Elections for Counties to be held between the Hours of eight and eleven before Noon. Actions to be commenced, &c. within three Months after the the Parliament begins.

§. 4. Elections in *Monmouthshire, Wales, Cheshire and Durham*, are directed by 27 *Hen. 8. cap. 26.* 34 & 35 *Hen. 8. cap. 13.* 35 *Hen. 8. cap. 11.* 25 *Car. 2. cap. 9.*

§. 5. By 7 & 8 *Will. 3. cap. 7.* continued by 12 & 13 *W. 3. cap. 5.* Returns contrary to the last Determination of the House of Commons are false Returns; and the Party grieved recovers double Damages with full Costs. The like Remedy for wilful malicious double Returns; and Securities given for such Returns are void. Forfeitures for such Contract 300*l.* Actions to be within two Years after Cause of Action.

§. 6. By 7 & 8 *Will. 3. cap. 25.* Forty Days to be between the *Teste* and Return; the Writ to be delivered to the proper Officer only, who is to indorse the Day of the Receipt, and forthwith make out Precepts to Mayors, &c. and cause them to be delivered to Mayors, &c. who are also to indorse the Day, &c. and give four Days Notice, &c. and proceed to Election within eight Days from the Receipt. No Fee due for Receipt, Delivery or Return. The Election for Counties to be at the most usual Place within forty Years last past, and at the next County-Court, unless it happens within six Days after Receipt

Receipt of the Writ, or upon the same Day. In that Case he is to adjourn and give ten Days Notice. And he or his Under-Sheriff is to take a Poll, if required, and appoint Clerks, &c. to be sworn, &c. and Inspectors for the Candidates. The Freeholders to be sworn. And he is not to make any unnecessary Adjournment, nor to any other Town without Consent of Candidates, and to deliver a Copy of the Poll at a reasonable Price for Writing, on Forfeiture of 500 *l.* to the Party grieved. Persons not eligible under twenty-one Years of Age. The Sheriff of *Hampshire*, at the Request of a Candidate, may adjourn to *Newport*, when all the Freeholders are polled at *Winchester*.

§. 7. By 7 & 8 *W. 3. cap. 27.* The Oaths enacted by 1 *W. & M.* to be tendered to every Voter, at the Request of any Candidate, or Declaration to Quakers.

§. 8. By 10 & 11 *W. 3. cap. 7.* Returns to be made with all convenient Expedition to the Clerk of the Crown. Fees four Shillings for a Knight, and two Shillings for a Citizen, &c. The Officers of the Cinque Ports to have six Days for the Delivery of a Precept notwithstanding 7 & 8 *W. 3. cap. 25.* Not making due Returns according to this Act forfeit 500 *l.* By 6 *Anne, cap. 6.* Directions for *Scotland*. By 6 *Anne, cap. 23.* Electors to take the Abjuration Oath, (or, being a Quaker, the Declaration) at the Request of a Candidate.

§. 9. By 9 *Anne, cap. 5.* Candidates (except eldest Sons of Peers, or of Persons qualified to serve for Shires, or Candidates for the Universities) are to take an Oath of their Qualification, being required; (for which see the Act) the same to be certified into Chancery. Fees, one Shilling for the Oath, two Shillings for the Certificate, and two for filing.

§. 10. By 10 *Anne, cap. 23.* Freeholders, if required by a Candidate, to be sworn; and *Jurat* enter'd to their Names and Place of Freehold
and

and Abode. Poll-Books to be delivered within twenty Days to the Clerk of the Peace, on Oath before the two next Justices, *Quorum unus affirmat*, against the Name of Quakers.

§. 11. By 2 Geo. 2. cap. 23. Presiding Officer to administer *gratis* the Oath or Affirmation against Bribery; Forfeiture fifty Pounds and full Costs; and Polling before taking Oath, if demanded, Officer forfeits One hundred Pounds, and full Costs, and Voters the like. And Officer immediately after reading the Writ or Precept is to take the Oath for a Return, (for both which Oaths see the Act) before any Justice, or any three Electors. Officers are to read this Act immediately after the Writ. Officers for every wilful Offence against it forfeit five Shillings. Prosecutions to commence within two Days after the Offence.

§. 12. By 13 Geo. 2. cap. 20. it is enacted, That no Person shall vote for Electing any Knight of a Shire in *England*, unless such Person has been assessed to publick Taxes, Church-Rates and Parish-Duties, in such Proportion as other Lands of 40 s. *per Annum*, within the said Parish or Township where the same shall lie, nor unless such Person shall have received the same for one whole Year before such Election, except such Lands come by Descent, &c. within the Time, on Penalty of 40 l.

§. 13. By 15 Geo. 2. cap. 22. it is enacted, That after the End of that Parliament, no Commissioners, their Deputies or Clerks, in the several Offices therein mentioned, shall sit or vote in any Parliament; and any such Person to forfeit 20 l. for every Day he shall sit or vote in the said House. This Act not to exclude the Treasurer, &c. of the Navy, and some other Officers.

§. 14. By 16 Geo. 2. c. 11. The Statutes for Elections of Members of Parliament for *Scotland* are explained and amended, and to regulate the Conduct of Returning Officers at such Elections.

§. 15. By Stat. 18 Geo. 2. cap. 18. it is enacted, That after the 24th of *June* 1745. at every Election for Knight or Knights of the Shires in *England* and *Wales*, instead of the Oath by 10 Ann. every Voter is to make Oath that he has a Freehold Estate of the clear yearly Value of 40 s. and to specify the Names of the Possessors of the Lands, and the Place where they lie, &c.

Persons guilty of Perjury or Subornation of Perjury, under the same Penalty as by Stat. 5 Eliz. and 2 Geo. 2. and Clauses 10th and 12th of Ann. repealed.

Booths to be erected, not exceeding fifteen in each County, three Days before the Poll, and the Sheriff to appoint Clerks to each Booth at the Expence of the Candidates.

Also a List of the Towns to be polled at each Booth, and the voting to be regulated by the said List ; and no Sheriff to adjourn a County-Court longer than sixteen Days ; and the Clause of 6 Geo. 2. repealed so far as it relates to holding of County-Courts.

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F I N I S.

THE c4
Coroner's GUIDE:
OR,
The OFFICE and DUTY
OF A
CORONER:

CONTAINING
Variety of PRECEDENTS, and proper In-
structions for executing the said Office.

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Compiled from the best Authorities.

In the SAVOY:

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M DCC XLVI.

Coroner's Guide

The Justice and Duty

CORONER

CONTAINING

Various of the Duties and Powers of
the Coroner for the County of New York

Compiled from the Statutes

In the State of New York

Printed by H. L. Ives, at the New York
State Library, in the City of New York

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THE Coroner's GUIDE:

O R,
The OFFICE and DUTY of a
CORONER, &c.

A Coroner's Name is derived *a Corona*, so ^{Name.} called because he is an Officer of the Crown, and hath Conuzance of some Pleas, which are called *Placita Corone*. 2 *Inst.* 31.

The antient Kings *Afred*, &c. in their first ^{Antiquity of} Constitutions ordained Coroners in every County, ^{his Office.} and that they should receive Appeals of Felony, and that all the next Towns should present to the Coroners in the County the Mischances to the Bodies of the People, and the Names of the Finders, &c. *Horn's Mir.* p. 7, 9.

This Office in antient Time was of such Estimation that none could have it but a Knight. See *Britton*, fol. 3.

The Number of Coroners are not fixed; in ^{Number,} most Counties there are four, besides several special Coroners in divers Liberties and privileged Places.

The Lord Chief Justice of the King's Bench is the Sovereign Coroner; and he may View a Body, and record it wherever he is. 4 *Rep.* 57. b.

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The Lord Mayor of *London* is Coroner of that City, but the Recorder pronounces the Judgment upon Outlawries there by Custom. *8 Rep. 56. a. Co. Lit. 288. b.*

There are likewise Coroners of the Verge, which is a certain Compass about the King's Court, who is also called Coroner of the King's House. *Crompton's Jurisd. 162.*

Also some Corporations and Colleges are licensed by Charter to appoint Coroners within their own Precincts. *4 Inst. 271.*

The Coroner of the King's Household hath an exempt Jurisdiction within the Verge, and the Coroner of the County cannot intermeddle within it; as the Coroner of the King's House may not intermeddle within the County out of the Verge. *2 Hawk. 45.*

But if a Murder be committed within the Verge, and the King removes before any Indictment taken by the Coroner of the King's Household, the Coroner of the County and the Coroner of the King's House shall inquire of the same. And if the same Person be Coroner of the County and of the King's House, an Indictment of Death before him as Coroner both of the King's House and of the County is good. *4 Rep. 46. 3 Inst. 134.*

By the Stat. 33 *Hen. 8.* it is ordained, That all Inquisitions upon the View of Persons slain, within any of the King's Palaces or Houses, or any other House or Houses wherein his Majesty shall happen to be abiding in his Royal Person, shall be taken by the Coroner for the Time being of the King's Household, without any other Coroner to assist, by the Oaths of twelve or more of the Yeomen Officers of the King's House.

Concerning

Concerning the Election of Coroners, and
their Qualifications.

TO prevent Men of small Value and little Election. Understanding to be chosen Coroners, it is necessary a Coroner have the following five Qualities.

1. He should be *probus Homo*.
2. *Legalis Homo*.
3. Of sufficient Understanding and Knowledge.
4. Of good Ability and Power to execute his Office according to his Knowledge.
5. Diligent in executing his Office.

And the Common Law doth not only require expert Men to be Coroners, but Men of sufficient Ability and Livelihood, for three Purposes:

1. The Law presumes they will do their Duty.
2. That they be able to answer to the King all such Fines and Duties as belong to him.
3. That they execute their Office without Bribery. *Co. 2 Inst. 174.*

They ever were and still are elected in full County by the Freeholders, by Force of the King's Writ *de Coronatore eligendo*, for that both King and County have a great Interest and Benefit in the due Execution of their Office. *Ibid.*

And by the Statute 28 *Edw. 3. cap. 6.* Coroners shall be chose in full County, of the most meet and lawful People, saving to the King and other Lords, which ought to make Coroners, their Franchises.

By the Stat. 14 *Edw. 3. cap. 8.* it is enacted, That no Coroner shall be chosen unless he have Land in Fee sufficient in the same County.

And by the Statute of *West. 1. c. 10.* it requireth such a Coroner as can, will and may attend to execute the said Office; and therefore if such a Coroner be elected and chosen as cannot or will not attend the Execution of the same,

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he is to be removed and discharged from his Office by Writ, and the Cause of his Insufficiency must be exprest in the Writ, the Form of which Writ may be found in the *Register of Writs*, fo. 177. And

If a Coroner of any County dieth or be discharged from his Office, then that Writ *de Coronatore eligendo* lieth, and that Writ shall be awarded unto the Sheriff, that he in full County, by the Freeholders of the County, chuse another in his Place, and to certify the Election, and his Name who is chosen, into the Chancery. *F.N.B.* page 163. on the Margin.

When a Coroner is discharged of his Office by the King's Writ sent unto him, thereupon shall issue another Writ, directed unto the Sheriff to chuse a new Coroner, and that Writ shall recite the Cause of his Discharge in the following Words:

The King to the Sheriff of, &c.

York, to wit. *B*Ecause A. B. Gent. one of the Coroners of our said Sovereign Lord the King in the said County, has divers other Busineses which he occupies himself in, and therefore has not Leisure, as we are well assured, to exercise the Office of a Coroner as he ought to do, him from the said Office we have removed: And we command thee, that if it so be, then in thy full County, by the Assent of the same, that thou cause another Coroner to be chosen in the Place of him the said A. B. according to the Form of the Statute set forth and provided. Or thus:

Because from the Testimony we have received, worthy of Credit, that C. D. one of the Coroners of our said Sovereign Lord the King in the said County, is so decayed and infirm, and broken with old Age, that he is not able to execute his Office, him therefore the said C. D. we have thought

thought fit from that Office shall be removed, and we command, &c. Or thus: Because E. F. one of the Coroners, is stricken with the Palsy, &c. Or, Because he dwelleth in the out-parts of the County, wherefore those Things which belong to the Office of a Coroner he cannot commodiously do. Or, Because he is chosen into the Office of Sheriff, or, Verder of a Forest, &c. (as the Case is).

But if a Coroner be discharged by the King's Writ from his Office upon a false Suggestion, then the Party may come into Chancery and require a Commission to inquire of the said false Suggestion; and if it be found false, then the King may make a *Supersedeas* to the Sheriff not to remove him from his Office; or if he be removed, to suffer him to execute his Office as he did before.

Coroner discharged upon a false Suggestion to be restored.

When a Coroner is chosen, he shall remain in the Office so long as he behaves himself well, and is capable of performing it; and is not changeable every Year, as Sheriffs and Escheators are. Also when he is chosen, the Sheriff of the same County, or his Under Sheriff, must give him his Oath as follows:

To continue in his Office during Life if able to officiate.

The Coroner's Oath for the due Execution of his Office.

YOU shall swear, that you will well and truly Oath,

serve our Sovereign Lord the King and his People in the Office of a Coroner, as one of his MAJESTY'S Coroners of this County of B. and therein you shall diligently and truly do all

By the Stat. 13 Will. 3.

ch. 6. it is enacted, That all and every

Person and Persons that shall bear any Office or Offices Civil or Military, shall take the Oath of Abjuration, which Oath is settled by the two subsequent Stat. 1 Ann. ch. 22. & 4 Ann. ch. 8. and other Statutes since require all Persons in publick Offices to receive the Sacrament and to take the Oath of Allegiance, &c.

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Things appertaining to your said Office, according to the best of your Knowledge and Power, both for the KING's Profit, and the Good of the Inhabitants within the said County, taking such Fees as you ought to take by the Laws and Statutes of this Realm, and not otherwise.

So help you God.

The Nature
of his Office.

The Coroner's Court is a Court of Record, but he cannot inquire of any other Felony but the Death of a Man, and that *Super visum Corporis*, upon Sight of the Body. He shall also inquire of the Escape of the Murderer, of Treasure Trove, Deodands, and the Wrecks of the Sea. 4 *Inst.* 271. Stat. 3 *Hen.* 7. c. 1.

Cannot make
a Deputy, at
least he should
not.

He is a Judicial Officer, and therefore cannot make a Deputy. And by the Statute *Officium Coronatoris*, 4 *Ed.* 1. c. 2. he is enjoined, *Statim accedere ad occisos*, immediately to go to the Slain, which implies he ought to see the dead Body. And if he doth not come, having Notice of the Death of any Person, he may be fined and imprisoned.

Upon Infor-
mation of the
Death of a
Person to sum-
mon a Jury.

So soon as he has Information to take a View of the Body of any Person killed, or suddenly dead or wounded, he shall go to the Place forthwith, and make out a Precept or Warrant to summon a Jury to appear before him at a Day and Place certain to inquire thereof, and the Form of the Precept or Warrant may be thus:

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The Coroner's Precept or Warrant to summon a Jury.

To the Bailiff, Constable and Tithingmen of
the Hundred of R. in this Behalf jointly
and severally, Greeting.

Surrey. **T**HESSE are in the Name of our Sovereign Lord the King, to will and require you, immediately upon the Receipt and Sight hereof, to summon and warn twenty-four able and sufficient Men to be and appear before me at Chertsey in the County of Surrey, on the seventh Day of this Instant July, at the House of A. B. being known by the Sign of the Black Bull in the said Town, between the Hours of two and four of the Clock in the Afternoon, then and there to inquire of, do and execute all such Things as on his Majesty's Behalf shall be lawfully given them in Charge, whereof fail not, as you and every of you will answer the contrary at your Peril. Given under my Hand and Seal the sixth Day of May in the eighteenth Year of his Majesty's Reign, and in the Year 1745. By me C. D. one of the Coroners of the County aforesaid.

If it be in a City or Corporation, then the Form of the Warrant or Precept is thus :

To the Sheriffs of the City of York, and to the Serjeants at Mace attending the said Sheriffs.

York. **T**HESSE are to will and require you, and in the Name of our Sovereign Lord the King, &c. straitly to charge and command you, that you cause to come before me, one of the Coroners of the City of York and County of the same City, at the House of E. F. known by the Sign of the Bumper in Coney-street in the said City,

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City, between the Hours of one and three of the Clock in the Afternoon, on this present first Day of May, twenty-four good and lawful Men of the said City, then and there to inquire upon the View of the Body of G. H. there lying dead, how and in what Manner he came to his Death; fail not herein as you will answer the contrary. Given under my Hand and Seal this first Day of May, &c. By me J. K. one of the Coroners of the City aforesaid.

When the Coroner is come to the Place his Warrant appointed, he is to call the Constable, &c. to make a Return of the Warrant, and when he has it, command one of the Bailiffs or Constables his Precept was directed to, or some other for them, to make three Proclamations, or O Yes, and call the Jury after this Manner:

Jury failing to appear, being duly summoned, unless prevented by Sickness, &c. forfeits 40 s.

YOU good Men that are returned to appear here this present Time to inquire for our Sovereign Lord the King, &c. answer to your Names, as you shall be called, every Man at the first Call, upon Pain and Peril that shall fall thereon.

The Jury appearing and having chosen their Foreman, he is to be sworn first, and after him the Rest of the Jurors may be sworn, three or four at once, till you have sworn about fifteen, which is a sufficient Number.

The Foreman's Oath may be thus:

Foreman's Oath.

Or a Person unknown, as the Case is.

YOU shall diligently inquire and true Presentment make on the Behalf of our Sovereign Lord the King, &c. how and in what Manner * L. M. here lying dead, came to his Death; and of such other Matters relating to the same as shall be lawfully required of you, according to your

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*your Evidence; and you shall deliver up to me,
his Majesty's Coroner, a true Verdict thereof.*

So help you God.

Oath of the Rest of the Jury.

*SUCH Oath as A. B. the Foreman of this In- Oath of the
quest, for his Part hath taken, you and every Rest of the
one of you shall well and truly observe and keep Jury.
on your Parts.*

So help you God.

The Jury being all sworn, command them to stand together, and hear their Charge as follows:

*The Coroner's Charge to the Jury of what Things
he and they are to inquire, is best described
from the Statute as follows:*

A Coroner, if he be certified by the King's Of what
Bailiffs, or other honest Men of the Coun- Things a Co-
try, first he shall go to the Places where any be roner shall in-
killed, or suddenly dead or wounded, and shall quire:
forthwith command four of the next Towns, or Of Murder,
five or six, to appear before him in such a
Place, and when they are come thither, the Co-
roner, upon the Oath of them, shall inquire, If where killed,
they know where the Person was killed, whether in what Place,
it were in any House, Field, Bed, Tavern or and by whom.
Company, and who were there, who were cul-
pable either of the Act or Force, and who were
present either Men or Women, and of what Age
soever they be, (if they can speak, or have any
Discretion) and how many soever be found cul-
pable by Inquisition in any of the Matters afore-
said, they shall be taken and delivered to the
Sheriff, and shall be committed to the Gaol:
And such as are found and not Guilty, shall be
attached until the coming of the Justices, and
their Names shall be written in the Coroner's
Rolls.

If

Persons killed
in Fields or
Woods.

To inquire if
the dead Per-
son be known,
or a Stranger,
and what
Goods he
hath.

Which are to
be appraised
and delivered
to the Town-
ship.

Of Persons
drowned or
suddenly dead,
after such Bo-
dies are seen,
to inquire
if strangled,
&c.

If any Man happen to be killed, and is found in the Fields or the Woods, first it is to be inquired, whether he was killed in the same Place or not; and if he were brought and laid there, they shall do so much as they can to follow their Steps that brought the Body thither, whether he were brought upon a Horse or a Cart. It shall be inquired also, if the dead Person were known, or else a Stranger, and where he lay the Night before; and if any be found Guilty of the Murder, the Coroner shall immediately go unto his House, and shall inquire what Goods he hath, and what Corn he hath in his Grange: And if he be a Freeman, they shall inquire how much Land he hath, and what it is worth yearly, and what Corn he hath upon the Ground; and when they have thus inquired, they shall cause all the Land, Corn and Goods to be valued, in like Manner as if they should be sold immediately; and thereupon they shall be delivered to the whole Township, and they shall be answerable before the Justices for all: And likewise of his Freehold, how much it is worth yearly over and above the Service due to the Lords of the Fee; and the Land shall remain in the King's Hands until the Lords of the Fee have made Fine for it. And immediately upon these Things being inquired, the Bodies of such Persons being dead, shall be buried. Stat. 4 *Edw. 1.*

In like Manner it is to be inquired of them that be drowned, or suddenly dead; and after such Bodies are to be seen, whether they were so drowned, or slain, or strangled by the Sign of a Cord tied straight about their Necks, or about any of their Members, or upon any other Hurt, found upon their Bodies; whereupon they shall proceed in the Form abovesaid. And if they were not slain, then ought the Coroner to attach the Finders, and all other in Company. *Ibid.*

All Wounds ought to be viewed, the Length, Breadth and Deepness, and with what Weapons, and in what Part of the Body the Wound or Hurt is, and how many be culpable, and how many Wounds there be, and who gave the Wound; all which Things must be intolled in the Roll of the Coroners. *Ibid.*

Concerning Horses, Boats, Carts, &c. whereby any are slain, that properly are called *Deodands*, they shall be valued and delivered unto the Towns, as before is said. *Ibid.*

The Charge in Brief may be thus :

Gentlemen,

YOU that are sworn, you by your Oaths are to enquire of the Death of this Man, whether he died of the Felony or by Mischance; and if of Felony, whether of his own Act or of another's; and if by Mischance, whether by the Act of God or of Man; and if of Famine, whether of Poverty or common Pestilence, and from whence he came, and who he was; and if he died of another's Felony, who were Principals, and who Accessaries, and if Hue and Cry were duly made or not, and whether the Men fled according to Law or not, and who threatened him of his Life or Members, and who were Sureties of the Peace; or whether he died of long Imprisonment or of Pain, and by whom he was further from Life and nearest to his Death; and so of all prevailing Circumstances that can come by Presumptions.

And in Case he died by a Hurt or a Fall, or other Chance by the Act of God, so that he had no Power to speak before his Death, then you shall inquire the Finders, and who were his Parents, Relations or Neighbours, and if he were killed there or elsewhere; and if elsewhere, by whom and how he was thence brought, and the Value and Kind of the Deodand, and to whose Hand

Hand it came; for whatsoever was the Cause of his Death is Deodand, except Vessels in the Sea; but the Goods or Money upon the Horse, in a Mill, Carts and Houses, are not accounted Deodands.

You should also inquire of Accessaries, which are eight in Number: 1. Those who command, 2. Those who conceal. 3. Those who allow and consent. 4. Those who see, and could prevent it. 5. Those who help and are in the Force. 6. Those who are Partners in the Gain. 7. Those who knew thereof, and did not interrupt or hinder it by forbidding or endeavouring to prevent it. 8. Those who knowingly receive such Offenders. All which you are to enquire of. And I am obliged by my Office to remind you of the Laws against the Offenders, which are as follows, *viz.*

Penalties.

If one Man wilfully kill another.

Forfeits his Lands and Goods.

If a Man kill or drown himself.

Forfeits Goods and Chattels only.

If any Homicide happen to be wilful Murder, which Crime cannot be too severely punished.

The Offender ought to lose both Life, Land and Goods.

But if it be found Manslaughter.

To have the Benefit of his Clergy, and so save his Life, but shall forfeit his Lands and Goods.

The Goods must be found appraised and valued of such Offenders, and left in the Town or Village where such Offender dwelleth until the Offender be acquitted or convicted by due Course of Law; but the Offender must have sufficient out of them to keep him alive to answer his Fact, and what remains afterwards, if the Offender be convicted; those to whom such Goods do belong by the Law must have them, and

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and discharge the County who had the Care of them. And as for the Offender's Free Land after his Conviction, his Majesty must have *Annum, diem & vastum* therein, and after the Lord of whom it is holden shall have it as an Escheat.

After the Charge is delivered, then command three Proclamations to be made thus :

IF any Man can give Evidence on the Behalf of his Majesty, how and in what Manner A. B. here lying dead, came to his Death, draw near and you shall be heard.

The Evidence appearing, to give him, her or them this Oath following :

ALL such Evidence as you shall give to this Inquest concerning the Death of A. B. here lying dead, shall be the Truth, the whole Truth, and nothing but the Truth.

The Oath.

So help you God.

If the Evidence be not ready, you may adjourn to another Day, to the same or another Place, to receive their Evidence, binding the Jurors by Recognizance in twenty Pounds each for their Appearance.

Proceedings thereon.

THE Coroner must then send out his Warrants to the Witnesses, commanding them to come and be examined before him, &c. and to deliver their Knowledge touching the Matter in Writing under their Hands.

If their Evidence concern a Man's Life, then must all the Witnesses be bound over in twenty Pounds each at the least personally to appear at the Assizes then next ensuing, to deliver there their Knowledge therein.

The Form of the Recognizance is thus :

Surrey. THE twenty-second Day of May in the Year, &c. A. A. of C. in the County of Surrey, acknowledges himself to owe and to be indebted to our Sovereign Lord the King in the Sum of twenty Pounds.

* It may be as proper to leave out the Place, because it is sometimes altered by the Judges.

The Condition of this Recognizance is such, That if the said *A. A.* do personally appear before the Justices of Assize and Gaol-Delivery at the next Assizes to be holden (at * *K.*) for the said County, and then and there deliver his Testimony touching the Death of *A. B.* and do not depart thence without Licence of the said Justices of the Court, that then this Recognizance to be void and of no Effect ; or else the same to stand and continue in full Force and Vertue.

Taken and acknowledged the twenty-second Day of *May*, &c. *aforsaid*, before me *C. D.* Gent. one of the Coroners of the County *aforsaid*.

Some Observations.

Power of a Coroner to inquire of any Accessaries.

A Coroner hath not any Power to inquire of any Accessaries after the Fact, but he may of Accessaries before the Fact, as well as of the Principals, and whether any of them so found Guilty fled for the same ; and if such Flight is found, the Offender forfeits his Goods and Chattels, and the Flight is not traversable. *S. P. C. 183.*

To deliver Inquisitions.

After the Felony found, the Coroners deliver their Inquisition before the Justices of the next General Gaol-Delivery in the County, and the said Justices are to proceed against the Murderers

if

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if they be in the Gaol, or else they are to return the same Inquisition into the King's Bench; and if any Coroner do not certify his Inquisition in such Manner, he forfeits one hundred Shillings. 3 H. 7. c. 1.

Also every Coroner upon any Inquisition before him found, whereby any Person is indicted for Murder or Manslaughter, or as Accessary to the same before the Fact, shall put in Writing the Effect of the Evidence given to the Jury before him, being material; and shall bind such by Recognizance to prove the same at the next Gaol-Delivery for the County, &c. Stat. 1 & 2 Ph. & M. c. 13.

Coroner to put in Writing the Effect of the Evidence given to the Jury.

Where-ever Coroners act as Judges, as in taking an Inquisition of the Death of a Man, &c. the Act of any one of them who first proceeds in the Matter is the same as if all had joined in it. And it is said, after such Proceeding by one of them, the Act of any other will be void. S. P. C. 53. a.

Coroner who first proceeds, his Jurisdiction.

Where Coroners are impowered to act ministerially, as in the Execution of any Process directed to them, through the Default or Incapacity of the Sheriff, their Acts will be void if they do not all join. S. P. C. 52. a.

Where all must join.

If there is any Practice with the Coroner to suppress the Evidence, the King's Bench may set aside the Inquisition upon his Misbehaviour: And if he omit or neglect to inquire, the Chief Justice, as supreme Coroner, may do it, or appoint Commissioners; but then it must not be (*super visum Corporis*) upon Sight of the Body, if done by Commissioners. 1 Vent. 182.

On Coroner's Misbehaviour, the C. J. to act, &c.

Where a Coroner's Inquisition was quashed, he must make a new one, *super visum Corporis*; but if he misbehaves himself, and a *Melius inquirendum* is granted, the Inquisition must be taken by the Sheriff or Commissioners upon Affidavits, because none but a Coroner can take an Inquisition *super visum Corporis*. 1 Salk. 100.

Where a Coroner's Inquisition is quashed, he must make a new one. Inquisition to be taken by the Sheriff.

A

Melius inquirendum, when granted.

A *Melius inquirendum* is never granted after an Inquisition *super visum Corporis* is filed, unless it is quashed upon Oath made of a Misdemeanor in the Coroner or Jury.

In some Cases a *Melius inquirendum* may go to the Sheriff; as if they can bring an Affidavit that the Jury did not go according to their Evidence, &c. 3 *Mod. Rep.* 80, 238.

If it be found before the Coroner *super visum Corporis*, that one was *Felo de se*, the Executors or Administrators of the Deceased cannot traverse it. 3 *Inst.* 55.

Coroner to hear Counsel.

This Inquisition being final, the Coroner ought to hear Counsel and Evidence on both Sides. 2 *Sid.* 90, 101.

Coroner's Fees.

Fees.

BEFORE the Stat. 3 *Hen. 7. ch. 1.* a Coroner had not any Fee for doing his Office, but by that Statute he is allowed upon every Inquisition taken upon a Body slain, thirteen Shillings and Four-pence out of the Goods of the Slayer, if he have any; and if not, then of the Amerciament of the Township for the Escape of the Murderer; nor do I find any Authority in the Books for a Coroner's taking more. On the contrary, in many Cases he is not intitled to any Fee, notwithstanding he is to do his Office, or is liable to be fined and imprisoned.

A Coroner hath a Fee appertaining to his Office of one Penny for every Visne, when they appear before the Justices of Assize. *Fitz. Tit. Coron.* 321, 371.

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Coroner's Fees in London.

BY Statute 3 Hen. 7. it is provided, That no Coroner demand or take any Thing of any Man for doing his Office, yet the Coroner of London usually takes extraordinary Fees.

The Fees in London formerly were,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Warrant for summoning a Jury,	0	2	6
The Inquisition,	0	6	8
Coroner's Fee,	0	13	4
Warrant or Certificate to bury the Body,	0	2	6
	1	5	0

But now the Fees are much enlarged according to the Ability of the Person who is to pay; but this only by Custom, and is thought an Oppression. See *Bohun's Priv. Lond.* 68. *Green's Priv.* 214.

Precedents of Inquisitions.

An Inquisition of Murder, on View of the Body.

AN Inquisition indented, taken at H. in the County of Hertford aforesaid the twenty-first Day of April in the Year, &c. before me C. L. one of the Coroners of our Lord the King for the County aforesaid, upon the View of the Body of one W. F. then and there lying dead, upon the Oaths of A. B. C. D. E. F. &c. good
c and

and lawful Men of the said County, who being sworn and charged to inquire on the Part of our said Lord the King, when, where, how and after what Manner the said W. F. came to his Death, do say upon their Oath, that one F. J. late of H. aforesaid, Gent. and A. G. late of H. aforesaid, Gent. not having God before their Eyes, but being moved and seduced by the Instigation of the Devil, on the said nineteenth Day of April in the eighth Year aforesaid, about the first Hour in the Night of the same Day, with Force and Arms, and so forth, at Hertford in the County aforesaid, in and upon the aforesaid W. F. then and there being in the Peace of God and of the said Lord the King, feloniously, voluntarily, and of their Malice forethought, made an Assault; and that the aforesaid F. J. then and there with a certain Sword made of Iron and Steel of the Value of five Shillings, which be the said F. J. then and there had and held drawn in his right Hand, the aforesaid W. F. in and upon the left Part of the Belly of the said W. F. a little above the Navel of the said W. F. then and there violently, feloniously, voluntarily, and of his Malice forethought, struck and pierced, giving to the said W. F. then and there with the Sword aforesaid, in and upon the aforesaid left Part of the Belly of the said W. F. a little above the Navel of the said W. F. one mortal Wound of the Breadth of half an Inch and of the Depth of three Inches, of which said mortal Wound the aforesaid W. F. then and there instantly died. And that the aforesaid A. G. then, to wit, on the nineteenth Day of April in the eighth Year aforesaid, at the Time of the Felony and Murder aforesaid, by the aforesaid F. J. in Form aforesaid, feloniously, voluntarily, and of his Malice forethought, done and perpetrated at Hertford aforesaid in the County aforesaid, feloniously, voluntarily, and of his Malice forethought, was present, abetting, assisting, aiding, comforting and maintaining the aforesaid F. J.

to commit and perpetrate the Felony and Murder aforesaid, in Form aforesaid, feloniously, voluntarily, and of his Malice forethought; and so the Jurors aforesaid upon their Oath aforesaid say, that the aforesaid F. J. and A. G. the aforesaid W. F. on the said nineteenth Day of April in the Year aforesaid, at Hertford in the County aforesaid, in Manner and Form aforesaid, feloniously, voluntarily, and of their Malice forethought, killed and murdered, against the Peace of the said Lord the King that now is, his Crown and Dignity, and so forth. And the Jurors aforesaid farther say upon their Oath, that the aforesaid F. J. and A. G. in Form aforesaid, feloniously, voluntarily, and of their Malice forethought, done and perpetrated, or ever afterwards to this Time had not, nor either of them had, nor as yet have or hath any Goods or Chattels, Lands or Tenements within the County of Hertford aforesaid, or elsewhere, to the Knowledge of the said Jurors. In Witness whereof as well the aforesaid Coroner as the Jurors aforesaid have to this Inquisition put their Seals at the Day, Year and Place aforesaid.

E. S. Coroner.

On an Infant murdered, upon View of the Body.

Middlesex, *AN* Inquisition, &c. before me R. R. to wit. *A* Gent. one of the Coroners of our said Sovereign Lord the King in the said County, upon View of the Body of a certain Male Infant (there lying dead) born of the Body of A. B. late of H. in the County aforesaid, upon the Oath (of the Jury) who say upon their Oath aforesaid, that the said A. B. not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, on Friday, &c. in the fifth Year, &c. at H. aforesaid in the said County, did make an Assault upon

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upon the Male Infant aforesaid, then and there being in the Peace of God and of our Sovereign Lord the King, and that the said A. B. did feloniously, voluntarily, and of her Malice forethought, strangle and suffocate the said Infant with her Hand, of which said Strangling and Suffocation the said Infant at H. aforesaid in the said County immediately died, and so, &c.

An Inquisition upon one who was murdered in a Robbery.

*A*N Inquisition, &c. who say upon their Oath, that on Friday the thirtieth Day of April in the sixth Year, &c. it so happened, that a certain Person unknown, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, with Force and Arms, &c. that is to say, with Swords and Daggers, between five and six of the Clock in the Forenoon of the same Day, at H. aforesaid in the said County in the King's Highway did make an Assault upon the said R. N. then and there being in the Peace of God and of our said Sovereign Lord the King; and the said Person unknown did then and there feloniously strike the said R. N. upon the right Part of his Belly with a certain Sword of the Price of two Shillings, which he then and there held in his Hand, and did then and there give the said R. N. one mortal Wound with the Sword aforesaid, of four Thumbs Depth and one Thumb's Breadth, of which said mortal Wound the said R. N. then and there immediately died; and so the said Jurors say upon their Oath aforesaid, that the said Person unknown, at H. aforesaid in the said County, did feloniously kill and murder the said R. N. in Manner and Form aforesaid, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity. And the said Jurors upon their Oath aforesaid further say, that

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XXV

that the said Person unknown, after he had committed the said Felony and Murder in Manner aforesaid, did fly away, against the Peace, &c.

Upon one who hath hanged himself.

Middlesex, *AN* Inquisition, &c. (as before, to wit. *A* to the same Day) not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, did tie about the Branch of an Ash Tree, in the Orchard of one R. B. Gent. at H. aforesaid in the said County, (then and there being alone) a certain Rope of the Price of one Penny, which he the said W. R. then and there held in his Hands, and did then and there by that Means voluntarily and feloniously suffocate, strangle and hang himself with the Rope aforesaid; and so the said Jurors upon their Oath aforesaid say, that the said W. R. in Manner and Form aforesaid did voluntarily, feloniously, and as a Felon de se, (one who murders himself) against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and that the said W. R. had no Goods or Chattels, Lands or Tenements within the said County, to their Knowledge. In Witness, &c.

If it be for cutting his Throat, then add after the Words (being seduced by the Instigation of the Devil)

AT L. aforesaid in the said County, did then and there feloniously, voluntarily, and of his Malice forethought, make an Assault in and upon himself, then and there being in the Peace of God and our said Sovereign Lord the King; and that the said W. G. did then and there feloniously, voluntarily, and of his Malice forethought,

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thought, strike himself upon his Throat, with a certain Knife of the Value of one Penny, which the said W. G. then held in his right Hand, then and there giving to himself one mortal Wound with the said Knife upon his Throat, of the Breadth of four Inches and the Depth of one Inch, of which said mortal Wound the said G. W. at L. aforesaid in the said County languished, and languishing lived from the said twenty-ninth Day of December in the ninth Year above-mentioned, at L. aforesaid in the said County, died of that mortal Wound, and so, &c.

If one drowns himself.

AS above, to, at L. aforesaid in the County aforesaid, then and there being alone, in a common River there, himself voluntarily and feloniously drowned, and so the Jurors aforesaid upon their Oath aforesaid say, that the aforesaid S. K. in Manner and Form aforesaid then and there himself voluntarily and feloniously as a Felon of himself killed and murdered, &c.

If upon one *Non compos mentis*, thus :

AN Inquisition, &c. who say upon their Oath aforesaid, that the said R. N. on the Day and Year above-mentioned, and long before, that is to say, from the first Day of April in the fifth Year of the Reign, &c. and until the said Day being Lunatick, and not of sound Mind, Memory and Understanding, did come alone to a certain Bridge called, &c. and did then and there throw himself from the said Bridge into the Water, and did voluntarily (and * feloniously) drown himself, and so, &c.

* *Quere*, If it be not better to leave

out the Words, and feloniously: For one who is *Non compos mentis*, cannot be said to do any Thing *felleo animo*.

Upon

Upon one who died in Prison.

AN Inquisition, &c. who say upon their Oath, that the said W. B. who was before committed to Gaol by Sir T. P. Bart. upon Suspicion of a certain Felony having been committed by the said W. B. from the Visitation of God * died in the said Gaol on the Day and Year above-mentioned; and so the said Jurors upon their Oath say, that the said W. B. came to his Death in Manner and Form aforesaid, and not otherwise. In Witness, &c.

* Of a Fever, or other Distemper, as the Case is.

Or thus :

THAT the aforesaid A. P. on the Day of the Caption of this Inquisition, being a Prisoner in the Gaol of our Lord the King of his Castle of York in the County of York aforesaid, then and there died of the Visitation of God, and then and there in Manner and Form aforesaid came to his Death, and not otherwise. In Witness, &c.

An Inquisition for killing another in his own Defence.

Suffex, to wit. **A**N Inquisition, &c. who say upon their Oath, that whereas one G. L. late of, &c. Gent. at L. aforesaid, on the thirty-first Day of December in the ninth Year, &c. was in the Peace of God and our Sovereign Lord the King, that the said H. B. about two of the Clock in the Afternoon of the same Day did come, and of his Malice forethought, did then and there make an Assault upon him the said G. L. and did then and there endeavour to have beaten and killed him the said G. L. by continuing the Assault aforesaid from the House of one W. B. in L. aforesaid, to a certain Place, called, &c. in the said County; and the

the said G. L. seeing that the said H. B. was so maliciously disposed, fled to a certain Wall in the said Place, called, &c. and could not escape from thence for fear of his Death; and so the said G. L. then and there continued to defend himself, in Preservation of his Life against the said H. B. and in his own Defence did strike the said H. B. upon the right Part of his Breast with a certain Sword of the Price of one Shilling, which the said G. L. then and there held in his right Hand, then and there giving to the said H. B. one mortal Wound of the Breadth of one Inch and Depth of three Inches, of which said mortal Wound the said H. B. at L. aforesaid in the said County languished, and lived languishing from the said thirty-first Day of December to the fifth Day of January from thence next ensuing; which said H. B. on the said fifth Day of January in the ninth Year above-mentioned, at L. aforesaid in the said County, died of that mortal Wound, and so the said G. L. did then and there kill the said H. B. in his own Defence. In Witness, &c.

Of Appeals.

Appeal of
Death of two
Sorts.

If a Wife do
not continue a
Widow, the
Appeal is
lost, &c.

Husband can-
not have an
Appeal for the
Death of his
Wife; but the
Heir only.

Appeal of Death is of two Sorts, viz. of Murder and Manslaughter; and these must be brought by the Wife for the Death of her Husband, or by the Heir for the Death of his Ancestor. *1 Read. Stat. 70.*

If the Wife does not continue a Widow, but marries before or depending the Appeal, the Appeal is lost; if she marries after Judgment she cannot have Execution; for the Loss of a Husband is the Cause of Appeal.

A Husband cannot have an Appeal for the Death of his Wife, but the Heir only, and the Heir must be Heir Male, tho' he derives from a Female; for no Female, except a Wife, can maintain an Appeal. *1 Inst. 25.*

The

The Form of an Appeal of Murder.

Berks. *BE it remembered, That at the General Delivery of the Gaol of the Lord the King in the County of Berks, held for the said County at R. in the County aforesaid, the Day, &c. in the tenth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, Defender of the Faith, &c. before Sir A. B. and C. D. Esq; &c. Justices of our said Lord the King, assigned to hold Pleas, &c. and Justices of the said Lord the King, his Gaol there of the Prisoners in the same being to deliver, assigned, &c. J. A. Son and Heir of T. A. deceased, in his proper Person, by Bill earnestly appealed R. D. late of, &c. and T. E. &c. in the Custody of J. W. Esq; Sheriff of the County aforesaid, to the Bar there brought in their proper Persons, of the Death of the said T. A. his Father; and there are Pledges of prosecuting his said Bill, that is to say, John Doe and Richard Roe; which said Bill follows in these Words:*

Appeal must set forth,
1. In what Part of the Body the Wound was given. 2. Of what Length and Depth, so that it may appear the Wound was mortal.
3. That the Party wounded died of that Wound within a Year and a Day after the giving of the Wound. If without Wound, it is

by Weapon or without; by Weapon, as by blow, bruising, &c. Without Weapon, as by poisoning, drowning, burning, strangling, &c. in these and all other Cases the Circumstances must be set forth. 2 *Inst.* 318. The Year of the Reign of the King, the Day that one died, not the Day of the Wound, or blow. 3 *Inst.* 53. The Hour in the Count upon the Appeal, one may say about ten of the Clock, &c. but you must not say about the Day, Year, or that the Wound or Blow was about any Part of the Body. 3 *Inst.* 53. 4 *Rep.* 41, 42. Time of the King; this is added notwithstanding Mention was made of the Year before, where the Blow, &c. was given: For here the Year wherein Death ensued is to be shewn, that it may appear that he died of the Blow, &c. within the Year and Day. If the Murder was in a Town, it must be named; so if in a City, the Parish must be alledged; but in the Country, if a Parish contain several Towns, alledge it in a Town, and with what Weapon. The Year to be computed by the Kalendar Months. The Day is to be intended of the Natural Day. *Stat. Glouc. c. 9. 6 Edw. 1.*

Berks,

Berks, ff. J. A. Son and Heir of T. A. late of, &c. in the County of B. Esq; in his proper Person, earnestly appeals R. D. late of, &c. Gentleman, and T. E. late of, &c. in Custody of J. W. Esq; Skeriff of the County of B. aforesaid, being to the Bar brought in their proper Persons, of the Death of the said T. A. his said Father; for that, that the said R. D. not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the Day, &c. in the Year of the Reign, &c. with Force and Arms, &c. at the Parish of, &c. in the County of B. aforesaid, that is to say, in a certain Place called, &c. in the King's Highway there, upon the said T. A. in the Peace of God and of our said Lord the King then and there being, feloniously, wilfully, and of his Malice forethought, made an Assault, and the said R. D. a certain Pistol of the Value of ten Shillings, then and there charged with Gunpowder and a leaden Bullet, which Pistol the said R. D. in his right Hand then and there had, feloniously, wilfully, and of his forethought Malice directed against the said T. A. he shot off and discharged, and with the said leaden Bullet, by Force of the said Gunpowder, out of the Pistol aforesaid, so as aforesaid directed, shot and discharged, the said T. A. in and upon the right Side of the Breast of him the said T. A. near his right Shoulder, then and there feloniously, wilfully, and of his Malice forethought, struck, pierced and wounded, and then and there the said R. D. with the said Bullet, so shot and discharged from the said Pistol as aforesaid, in and upon the said right Side of the Breast of him the said T. A. near his said right Shoulder, feloniously, wilfully, and of his Malice forethought, gave to the same T. A. one mortal Wound, of the Length and Depth, &c. of which said mortal Wound the said T. A. then and there instantly died. And the said E. E. the said Day, &c. in the

the same Year, at, &c. aforesaid, in the Place aforesaid, and in the King's Highway aforesaid, there feloniously, wilfully, and of his Malice forethought, was present, abetting, aiding, comforting and maintaining the said R. D. the Felony and Murder aforesaid, in Manner and Form aforesaid, to do and commit; and so the said R. D. and E. E. the said T. A. in Manner and Form aforesaid, feloniously, wilfully, and of Malice forethought, killed and murdered, against the Peace of our said Lord the King, his Crown and Dignity, &c. And as soon as the said Felons the said Felony and Murder had committed, they fled; and the said J. A. Son and Heir of the said T. A. made fresh Pursuit after the said Felons, &c. and if the said R. D. and E. E. the Felony and Murder aforesaid, so as aforesaid done, are willing to avow and affirm, then the said J. A. is ready the said Felony and Murder against them the said R. D. and E. E. to prove, according as the Court of our said Lord the now King here shall consider thereof, and hath found Pledges to prosecute his Appeal, &c.

For Variety of Indictments and Precedents of Appeals on Murder, Manslaughter, Rape, &c. and many curious Cases relating thereto, see *Jacob's Laws of Appeals and Murder, Keyling's Reports, &c.*

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